Legislative Proposals and Explanatory Notes to Implement Remaining Budget 2007 Tax Measures

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

October 2007

Canada

2008-01553/

Legislative Proposals and Explanatory Notes to Implement Remaining Budget 2007 Tax Measures

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

October 2007

Department of Finance Canada
Ministère des Finances Canada

© Her Majesty the Queen in Right of Canada (2007)
All rights reserved

All requests for permission to reproduce this document
or any Part thereof shall be addressed to
Public Works and Government Services Canada.

Available from the

Distribution Centre
Department of Finance Canada
Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Tel: 613-943-8665
Fax: 613-996-0901

Price : $40.00 including GST

This document is available free on the Internet
at www.fin.gc.ca

Cette publication est également disponible en français

Cat No.: F1-35/2007-1E
ISBN 978-0-660-19765-4

Legislative Proposals

Table of Contents

Part 1
Amendments Related to Income Tax

Income Tax Act

Clause in Legislation	Section of the Act Amended	Topic	Page
1	17	Amount owing by non-resident	1
2	18(9)	Limitation respecting prepaid expenses	3
3	18.2	Definitions - double-dip financing	3
4	19(5)	Replacement of "prescribed stock exchange" by "designated stock exchange"	9
5	20	Deductions permitted in computing income from business or property	10
6	38(*a.1*)	Taxable capital gain – donation of listed securities	10
7	53	Adjusted cost base of partnership interest	10
8	56(3)	Scholarships and bursaries	11
9	60(*x*)	Repayment under *Canada Education Savings Act*	11
10	66	Canadian and foreign exploration and development expenses	11
11	67.1	Expenses for food, etc.	12
12	80(1)	Replacement of "prescribed stock exchange" by "designated stock exchange"	13
13	89(1)	Replacement of "prescribed stock exchange" by "designated stock exchange"	13
14	91	Foreign affiliate income	13
15	92	Adjusted cost base of foreign affiliate	14
16	95	Foreign affiliates	15
17	104(21.2)	Beneficiaries' taxable capital gain	62
18	108(2)	Replacement of "prescribed stock exchange" by "designated stock exchange"	64
19	110(1)(*d.01*)	Charitable donation of employee option securities	64
20	110.1	Gifts of medicine	64
21	110.6	Capital gains deduction	65
22	115(2.3)	Non-resident persons – 2010 Olympic and Paralympic Winter Games	67
23	116(6)(*b*)	Replacement of "prescribed stock exchange" by "recognized stock exchange"	68
24	117(2.1)	Tax payable – WITB advance payment	68
25	117.1(1)	Annual adjustment	68
26	118	Personal credits	68
27	118.02	Transit pass tax credit	69
28	118.03	Child fitness tax credit	70
29	118.1	Exchange of beneficial interest in trust	70

Clause in Legislation	Section of the Act Amended	Topic	Page
30	120(4)	Definitions	71
31	122.1(1)	SIFT trusts – definitions - REIT	71
32	122.7	Working Income Tax Benefit	72
33	127	Investment tax credits	77
34	141(5)	Replacement of "prescribed stock exchange" by "designated stock exchange"	84
35	146.1(1)	Registered education savings plans - definitions	84
36	149.1	Charities	84
37	149.2	Excess corporate holdings of private foundations	88
38	152	Assessment	91
39	153(1)	Withholding obligation – exemption	92
40	156.1	No instalment required	92
41	157	Instalment payments	92
42	161(4.1)	Limitations - corporations	95
43	163(2)(*c.3*)	False statements or omissions	96
44	182(2)	Tobacco manufacturers' surtax – definitions	96
45	186.1(*b*)(vii)	Exemption from Part IV tax	97
46	188.1	Penalty for excess corporate holdings	97
47	204	"qualified investment"	98
48	212	Non-residents' Canadian-source interest income	99
49	214	Part XIII rules	102
50	220	Administration	102
51	241(4)(*q*)	Where taxpayer information may be disclosed	103
52	248(1)	Definitions	103
53	260(1)	Replacement of "prescribed stock exchange" by "stock markets" – securities lending arrangements	104
54	261	Functional currency reporting	104
	262	Authority to designate stock exchange	122
55	Various	Replacement of "prescribed stock exchange" by "designated stock exchange"	123

Income Tax Application Rules

Clause in Legislation	Section of the Act Amended	Topic	Page
56	10(5)	Certificates of exemption	124

Income Tax Conventions Interpretation Act

Clause in Legislation	Section of the Act Amended	Topic	Page
57	4.2	Stock exchanges	124

Income Tax Regulations

Clause in Legislation	Section of the Act Amended	Topic	Page
58	108(1.12)	Remittance - quarterly basis	124
59	3200 & 3201	Stock exchanges	124
60	3700	Replacement of "prescribed stock exchange" by "designated stock exchange"	125
61	3702	Replacement of "prescribed stock exchange" by "designated stock exchange"	125
62	4800	Replacement of "prescribed stock exchange" by "designated stock exchange"	125
63	6201	Term preferred share and taxable RFI share	126
64	7303.1	Northern residents deduction	126
65	7310	"prescribed trades"	126
66	8303(5)	Past service pension adjustment – normalized pension	127
67	8500	Interpretation	127
68	8503	Permissible benefits	127
69	8504	Highest average compensation	131
70	8507(3)(*a*)	Qualifying periods and periods of parenting	131
71	8514	Replacement of "prescribed stock exchange" by "designated stock exchange"	131
72	8516	Eligible contributions	131
73	Various	Replacement of "prescribed stock exchange" by "designated stock exchange"	131
74	9400	Prescribed programs of physical activity	132

Canada Pension Plan Regulations

75	8(1.12)	Remittance - quarterly basis	133

Insurable Earnings and Collection of Premiums Regulations

76	4(3.1)	Withholding amount	134

Part 2
Amendments in Respect of the Goods and Services Tax/Harmonized Sales Tax

Excise Tax Act

77	217	Imported taxable supply	134
78	218.1	Tax in participating province	134
79	236(1)	Meal expenses of truck drivers	134
80	237(3)	Minimum instalment base	137
81	248	Election for fiscal years	137
82	VII/1.2	Non-taxable importations	137

Part 3
Amendments to the Excise Tax Act
(Other than with Respect to the Goods and Services Tax/Harmonized Sales Tax)

Excise Tax Act

83	23.4 & 23.5	Excise taxation of renewable fuels	137

LEGISLATIVE PROPOSALS RELATED TO BUDGET 2007

PART 1

AMENDMENTS RELATED TO INCOME TAX

INCOME TAX ACT

1. (1) The portion of subsection 17(8) of the *Income Tax Act* before paragraph (*a*) is replaced by the following:

Exception

(8) Subsection (1) does not apply to a corporation resident in Canada for a taxation year of the corporation in respect of an amount owing to the corporation by a non-resident person if the non-resident person is a controlled foreign affiliate of the corporation throughout the period in the year during which the amount is owing to the extent that it is established that the amount owing

(2) Section 17 of the Act is amended by adding the following after subsection (8):

Borrowed money

(8.1) Subsection (8.2) applies in respect of money (referred to in this subsection and in subsection (8.2) as “new borrowings”) that a controlled foreign affiliate of a particular corporation resident in Canada has borrowed from the particular corporation to the extent that the affiliate has used the new borrowings

(*a*) to repay money (referred to in this subsection and in subsection (8.2) as “previous borrowings”) previously borrowed from any person or partnership, if

(i) the previous borrowings became owing after the last time at which the affiliate became a controlled foreign affiliate of the particular corporation, and

(ii) the previous borrowings were, at all times after they became owing, used for a purpose described in subparagraph (8)(*a*)(i) or (ii); or

(*b*) to pay an amount owing (referred to in this subsection and in subsection (8.2) as the “unpaid purchase price”) by the affiliate for property previously acquired from any person or partnership, if

(i) the property was acquired, and the unpaid purchase price became owing, by the affiliate after the last time at which it became a controlled foreign affiliate of the particular corporation,

(ii) the unpaid purchase price is in respect of the property, and

(iii) throughout the period that began when the unpaid purchase price became owing by the affiliate and ended when the unpaid purchase price was so paid, the property had been used principally to earn income described in clause (8)(*a*)(i)(A) or (B).

Deemed use

(8.2) To the extent that this subsection applies in respect of new borrowings, the new borrowings are, for the purpose of subsection (8), deemed to have been used for the purpose for which the proceeds from the previous borrowings were used or were deemed by this subsection to have been used, or to acquire the property in respect of which the unpaid purchase price was payable, as the case may be.

(3) The definition "controlled foreign affiliate" in subsection 17(15) of the Act is replaced by the following:

"controlled foreign affiliate"
« *société étrangère affiliée contrôlée* »

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada, means a corporation that would, at that time, be a controlled foreign affiliate of the taxpayer within the meaning assigned by the definition "controlled foreign affiliate" in subsection 95(1) if the word "or" were added at the end of paragraph (*a*) of that definition and

(*a*) subparagraph (*b*)(ii) of that definition were read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with the taxpayer,";

(*b*) subparagraph (*b*)(iv) of that definition were read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with any relevant Canadian shareholder;"; and

(*c*) that definition were read without reference to its paragraph (*c*).

(4) Subsections (1) and (2) apply to taxation years that begin after February 23, 1998 and, notwithstanding subsections 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any taxation year that begins after February 23, 1998 and ends before ANNOUNCEMENT DATE shall be made that is necessary to take subsections (1) and (2) into account.

(5) Subsection (3) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998, except that, in applying the definition "controlled foreign affiliate", in subsection 17(15) of the Act, as enacted by subsection (3),

(*a*) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004, that definition is to be read as follows:

"controlled foreign affiliate"
« *société étrangère affiliée contrôlée* »

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004, if the word "or" were added at the end of paragraph (*a*) of that definition and

(*a*) subparagraph (*b*)(ii) of that definition read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with the taxpayer,",

(*b*) subparagraph (*b*)(iv) of that definition read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with any relevant Canadian shareholder;", and

(*c*) that definition were read without reference to its paragraph (*c*).

(*b*) for taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998 and before 2003, that definition is to be read as follows:

"controlled foreign affiliate" *« société étrangère affiliée contrôlée »*

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) for taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998 and before 2003, if subparagraph (*b*)(iii) of that definition were read as "each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any person resident in Canada with whom the taxpayer does not deal at arm's length.".

2. (1) Subsection 18(9) of the Act is amended by striking out the word "and" at the end of paragraph (*d*), by adding the word "and" at the end of paragraph (*e*) and by adding the following after paragraph (*e*):

(*f*) for the purpose of the definition "eligible child care space expenditure" in subsection 127(9), the portion of an expenditure (other than for the acquisition of depreciable property) that is made or incurred by a taxpayer in a taxation year and that would, but for paragraph (*a*), have been deductible under this Act in computing the taxpayer's income for the year, is deemed

(i) not to be made or incurred by the taxpayer in the year, and

(ii) to be made or incurred by the taxpayer in the subsequent taxation year to which the expenditure can reasonably be considered to relate.

(2) Subsection (1) applies to expenses incurred on or after March 19, 2007.

3. (1) The Act is amended by adding the following after section 18.1:

Definitions

18.2 (1) The following definitions apply in this section.

"aggregate double-dip income" *« revenu total résultant d'un cumul de déductions »*

"aggregate double-dip income", of a particular corporation for a taxation year in respect of an inter-affiliate loan, means the total of the double-dip exempt earnings amount and the double-dip taxable earnings amount of the particular corporation for the taxation year in respect of the inter-affiliate loan.

"double-dip exempt earnings amount" *« montant des gains exonérés résultant d'un cumul de déductions »*

"double-dip exempt earnings amount", of a particular corporation for a taxation year in respect of an inter-affiliate loan owing to a foreign affiliate (referred to in this definition as the "earning foreign affiliate") of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, means the total of all amounts each of which is the amount, in respect of a share (referred to in this definition as the "specified share") of the capital stock of a particular foreign affiliate of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, determined by the formula

$$A \times [B - (C \times D)]$$

where

A is the participating percentage of the specified share in respect of the earning foreign affiliate at the end of a taxation year of the earning foreign affiliate that ends in the taxation year of the particular corporation;

B is the amount of the re-characterized exempt earnings income of the earning foreign affiliate in respect of the inter-affiliate loan for the taxation year of the earning foreign affiliate;

C is the foreign accrual tax applicable to the amount determined under the description of B; and

D is the relevant tax factor of the particular corporation for the taxation year of the particular corporation.

"double-dip taxable earnings amount" *« montant des gains imposables résultant d'un cumul de déductions »*

"double-dip taxable earnings amount" of a particular corporation for a taxation year in respect of an inter-affiliate loan owing to a foreign affiliate (referred to in this definition as the "earning foreign affiliate"), of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, means the total of all amounts each of which is the amount, in respect of a share (referred to in this definition as the "specified share") of the capital stock of a particular foreign affiliate of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, determined by the formula

$$A \times [B - (C \times D)]$$

where

A is the participating percentage of the specified share in respect of the earning foreign affiliate at the end of a taxation year of the earning foreign affiliate that ends in the taxation year of the particular corporation;

B is the amount of the re-characterized taxable earnings income of the earning foreign affiliate in respect of the inter-affiliate loan for the taxation year of the earning foreign affiliate;

C is the foreign accrual tax applicable to the amount determined under the description of B; and

D is the relevant tax factor of the particular corporation for the taxation year of the particular corporation.

"foreign accrual tax" *« impôt étranger accumulé »*

"foreign accrual tax" applicable to an amount of re-characterized income of a foreign affiliate (referred to in this definition as the "earning foreign affiliate"), of a particular corporation or of a corporation that does not deal at arm's length with the particular corporation, for a taxation year in respect of an inter-affiliate loan owing to the earning foreign affiliate means the total of

(*a*) the amount equal to that portion of any foreign income or profit taxes that was paid by the earning foreign affiliate or any other foreign affiliate, of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, that can reasonably be regarded as applicable to the re-characterized income, and

(*b*) the amount that would, if the re-characterized income were an amount included in computing the particular corporation's income under subsection 91(1) in respect of the earning foreign affiliate, be prescribed in respect of the earning foreign affiliate to be foreign accrual tax that is applicable to the re-characterized income for the purpose of the definition "foreign accrual tax" in subsection 95(1).

"inter-affiliate loan" *« prêt entre sociétés affiliées »*

"inter-affiliate loan" in respect of a particular corporation for a taxation year means a debt that is owing to a foreign affiliate of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation or to a partnership of which such a foreign affiliate is a member, if the income that the foreign affiliate derives in a taxation year from the interest paid or payable in respect of the debt is re-characterized income of the foreign affiliate for the taxation year.

"participating percentage" *« pourcentage de participation »*

"participating percentage" of a share (referred to in this definition as the "specified share") of the capital stock of a particular foreign affiliate of a particular corporation or of a corporation that does not deal at arm's length with the particular corporation, held by the particular corporation at the end of a particular taxation year of a non-resident corporation (referred to in this definition as the "earning foreign affiliate") that ends in the particular corporation's taxation year, which earning foreign affiliate was, at the end of the particular taxation year, a foreign affiliate of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, means the percentage that would, if the earning foreign affiliate were a controlled foreign affiliate of the particular corporation, be determined under subparagraph (*b*)(i) or (ii) of the definition "participating percentage" in subsection 95(1) in respect of the specified share in respect of the earning foreign affiliate at the end of the particular taxation year.

"re-characterized income" *« revenu redéfini »*

"re-characterized income" of a foreign affiliate of a corporation for a taxation year in respect of a debt owing to the foreign affiliate means the total of the re-characterized exempt earnings income and the re-characterized taxable earnings income of the foreign affiliate for the taxation year from the debt.

"re-characterized exempt earnings income" *« montant des gains exonérés redéfinis »*

"re-characterized exempt earnings income" of a foreign affiliate of a corporation for a taxation year in respect of a debt owing to the foreign affiliate means that portion of the income of the foreign affiliate for the taxation year from the debt that is included

(*a*) under subparagraph 95(2)(*a*)(ii) in computing the income from an active business of the foreign affiliate for the taxation year, or that would be so included if the income were income from property; and

(*b*) in computing the amount prescribed to be the exempt earnings of the foreign affiliate for the taxation year.

"re-characterized taxable earnings income" *« montant des gains imposables redéfinis »*

"re-characterized taxable earnings income" of a foreign affiliate of a corporation for a taxation year in respect of a debt owing to the foreign affiliate means that portion of the income of the foreign affiliate for the taxation year from the debt that is included (*a*) under subparagraph 95(2)(*a*)(ii) in computing the income from an active business of the foreign affiliate for the taxation year, or that would be so included if the income were income from property; and

(*b*) in computing the amount prescribed to be the taxable earnings of the foreign affiliate for the taxation year.

"taxable earnings base adjustment" *« montant des gains imposables rajustés »*

"taxable earnings base adjustment" of a particular corporation for a taxation year in respect of a share (referred to in this definition as the "specified share") of a particular foreign affiliate of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation and in respect of an inter-affiliate loan owing to a foreign affiliate of the particular corporation or of a corporation that does not deal at arm's length with the particular corporation, means the amount determined by the formula

$$A \times B/C$$

where

A is the amount of interest deduction denied under subsection (2) in respect of the particular corporation in respect of interest relating to the inter-affiliate loan for the taxation year;

B is the amount determined to be the double-dip taxable earnings amount of the particular corporation in respect of the inter-affiliate loan that can be attributed to the specified share for the taxation year; and

C is the aggregate double-dip income of the particular corporation in respect of the inter-affiliate loan for the taxation year.

Double-dip interest not deductible

(2) Notwithstanding any other provision of this Act, in computing the income of a corporation for a taxation year, no amount may be deducted in respect of the corporation's specified financing expense in respect of an inter-affiliate loan for the taxation year, except to the extent that that specified financing expense exceeds the corporation's aggregate double-dip income for the taxation year in respect of that inter-affiliate loan.

Specified financing expense

(3) A particular corporation's specified financing expense in respect of an inter-affiliate loan for a taxation year, is the amount, if any, by which

(*a*) the total of all amounts of interest paid or payable in the taxation year by the particular corporation on, and other costs referred to in paragraph 20(1)(*e*) paid or payable in the taxation year by the particular corporation in respect of,

(i) borrowed money, to the extent that it is reasonable to consider that the borrowed money is used, in that taxation year, directly or indirectly, for the purpose of funding, in whole or in part, the inter-affiliate loan, and

(ii) an amount payable for property where it is reasonable to consider that the property, or property substituted for it (or, where the property or property substituted for it is a share of the capital stock of a corporation, property of the corporation or of a person related to the corporation, or property substituted for such property) is used, directly or indirectly, for the purpose of funding, in whole or in part, the inter-affiliate loan, exceeds

(*b*) if the particular corporation has subsequently loaned the property referred to in paragraph (*a*), the total of all amounts that are, in respect of that subsequent loan, included in computing the income of the particular corporation for the taxation year and that relate to the period or periods of use referred to in that paragraph.

Aggregate double-dip income — related parties

(4) Subsection (5) applies to a corporation (referred to in this subsection and subsections (5) to (7) as the "debtor corporation") and another corporation in respect of a particular taxation year of the debtor corporation and an inter-affiliate loan if

(*a*) the debtor corporation's specified financing expense for the particular taxation year in respect of the inter-affiliate loan exceeds the debtor corporation's aggregate double-dip income for the particular taxation year in respect of the inter-affiliate loan;

(*b*) the other corporation's aggregate double-dip income for a taxation year in respect of the inter-affiliate loan exceeds the other corporation's specified financing expense for that taxation year in respect of the inter-affiliate loan;

(*c*) the other corporation's taxation year referred to in paragraph (*b*) ends in the particular taxation year; and

(*d*) at the end of the particular taxation year, the other corporation and the debtor corporation are related.

Deemed effects

(5) If this subsection applies to a debtor corporation and another corporation in respect of a particular taxation year of the debtor corporation and an inter-affiliate loan,

(*a*) the lesser of the excess determined under paragraph (4)(*b*) in respect of the other corporation and the excess determined under paragraph (4)(*a*) in respect of the debtor corporation is deemed to be included in the aggregate double-dip income of the debtor corporation in respect of the inter-affiliate loan and not to be included in the aggregate double-dip income of the other corporation;

(*b*) this subsection shall not apply to any other corporation in respect of the amount determined under paragraph (*a*); and

(*c*) for the purpose of determining the taxable earnings base adjustment of the other corporation, the amount determined under paragraph (*a*) is deemed to be

(i) an amount of interest deduction denied to it under subsection (2) in respect of interest relating to the inter-affiliate loan for its taxation year referred to in paragraph 4(*b*), and

(ii) an amount that is included in the aggregate double-dip income in respect of the inter-affiliate loan for its taxation year referred to in paragraph 4(*b*).

Allocation by debtor corporation

(6) If subsections (4) and (5) apply to more than one other corporation in respect of a debtor corporation and an inter-affiliate loan, the debtor corporation may allocate the excess double-dip incomes of the other corporations against the specified financing expense of the debtor corporation.

Allocation by Minister

(7) If a debtor corporation is entitled to make an allocation under subsection (6) but fails to do so, or does so in a manner that allows an excess to remain under subparagraph (4)(*a*) in respect of the debtor corporation and an excess to remain under subparagraph (4)(*b*) in respect of one or more other corporations, the Minister may allocate the excess double-dip incomes of the other corporations against the specified financing expense of the debtor corporation.

Inter-affiliate loans — exceptions

(8) A debt that would, at any time, otherwise be an inter-affiliate loan in respect of a corporation for a taxation year of a particular foreign affiliate is not an inter-affiliate loan at that time, if

(*a*) it is the case that

(i) another foreign affiliate, of the corporation or a corporation that does not deal at arm's length with the corporation, owes the debt,

(ii) the particular foreign affiliate and the other foreign affiliate are, at the end of their taxation years that include that time, resident in the same country, and

(iii) the particular foreign affiliate and the other foreign affiliate determine their income, for income tax purposes under the income tax laws of that country, on a consolidated or combined basis; or

(*b*) it is the case that

(i) the corporation is a taxpayer described in paragraph 95(2)(*l*)(iv),

(ii) the particular foreign affiliate holds the debt, and the other foreign affiliate owes the debt, in the ordinary course of businesses that are described in subparagraph (*a*)(i) of the definition "investment business" in subsection 95(1) and conducted principally with persons with which those affiliates deal at arm's length, and

(iii) the terms and conditions of the debt are substantially the same as the terms and conditions of similar debt entered into between persons dealing at arm's length.

Partnership rules

(9) If a partnership that owns, directly or indirectly, a share of the capital stock of a specified corporation in respect of the partnership has borrowed money or become liable for an amount payable (in this subsection referred to as the "partnership indebtedness") the interest in respect of which is deductible under paragraph 20(1)(*c*),

(*a*) there shall be added to the income of each corporation or partnership that is a member of the partnership, an amount equal to the member's specified proportion of the interest and other borrowing costs referred to in paragraph 20(1)(*e*) paid or payable by the partnership in respect of that member's specified proportion of the partnership indebtedness;

(*b*) for the purpose of this section and paragraphs 20(1)(*c*) and (*e*), an amount equal to the amount added to the member's income by paragraph (*a*) shall be deemed to be an amount of interest or other borrowing cost, as the case may be, paid or payable by the member; and (*c*) the member shall be deemed to have incurred its specified proportion of the partnership indebtedness and to use the proceeds or property acquired in respect of that indebtedness in the same manner as the partnership.

Interpretation

(10) For the purpose of subsection (9),

(*a*) a specified corporation in respect of a partnership means

(i) a foreign affiliate of a member of the partnership,

(ii) a foreign affiliate of a person with whom the partnership does not deal at arm's length, or

(iii) a foreign affiliate of a person that does not deal at arm's length with a member of the partnership; and

(*b*) the specified proportion of a member of a partnership for a fiscal period of the partnership means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of $1,000,000.

(2) Subsection (1) applies in respect of interest paid or payable in respect of a period or periods that begin after 2011.

4. (1) The portion of paragraph (*e*) of the definition "Canadian newspaper" in subsection 19(5) of the Act before clause (iii)(C) is replaced by the following:

(*e*) a corporation

(i) that is incorporated under the laws of Canada or a province,

(ii) of which the chairperson or other presiding officer and at least 3/4 of the directors or other similar officers are Canadian citizens, and

(iii) that, if it is a corporation having share capital, is

(A) a public corporation a class or classes of shares of the capital stock of which are listed on a designated stock exchange in Canada, other than a corporation controlled by citizens or subjects of a country other than Canada, or

(B) a corporation of which at least 3/4 of the shares having full voting rights under all circumstances, and shares having a fair market value in total of at least 3/4 of the fair market value of all of the issued shares of the corporation, are beneficially owned by Canadian citizens or by public corporations a class or classes of shares of the capital stock of which are listed on a designated stock exchange in Canada, other than a public corporation controlled by citizens or subjects of a country other than Canada,

and, for the purposes of clause (B), where shares of a class of the capital stock of a corporation are owned, or deemed by this definition to be owned, at any time by another corporation (in this definition referred to as the "holding corporation"), other than a public corporation a class or classes of shares of the capital stock of which are listed on a designated stock exchange in Canada, each shareholder of the holding corporation shall be deemed to own at that time that proportion of the number of such shares of that class that

(2) Subsection (1) applies on and after the day on which this Act is assented to.

5. (1) Subsection 20(1) of the Act is amended by adding the following after paragraph (*nn*):

Recapture of investment tax credits — child care space amount

(*nn.1*) total of all amounts (other than an amount in respect of a disposition of a depreciable property) added because of subsection 127(27.1) or (28.1) to the taxpayer's tax otherwise payable under this Part for any preceding taxation year;

(2) Subsection 20(3) of the Act is replaced by the following:

Borrowed money

(3) For greater certainty, if a taxpayer uses borrowed money to repay money previously borrowed, or to pay an amount payable for property described in subparagraph (1)(*c*)(ii) previously acquired (which previously borrowed money or amount payable in respect of previously acquired property is, in this subsection, referred to as the "previous indebtedness"), subject to subsection 20.1(6), for the purposes of paragraphs (1)(*c*), (*e*) and (*e.1*), section 18.2, subsections 20.1(1) and (2), section 21 and subparagraph 95(2)(*a*)(ii), and for the purpose of paragraph 20(1)(*k*) of the *Income Tax Act*, Chapter 148 of the Revised Statutes of Canada, 1952, the borrowed money is deemed to be used for the purpose for which the previous indebtedness was used or incurred, or was deemed by this subsection to have been used or incurred.

(3) Subsection (1) applies on and after March 19, 2007.

(4) Subsection (2) applies in respect of interest paid or payable in respect of a period or periods that begin after 2011.

6. (1) Subparagraph 38(*a.1*)(i) of the Act is replaced by the following:

(i) the disposition is the making of a gift to a qualified donee (other than a non-qualifying private foundation, as defined in subsection 149.1(1)) of a share, debt obligation or right listed on a designated stock exchange, a share of the capital stock of a mutual fund corporation, a unit of a mutual fund trust, an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(*a*)) or a prescribed debt obligation, or

(2) Subsection (1) applies in respect of gifts made on or after March 19, 2007, except that, in its application before the day on which this Act is assented to, the reference to "designated stock exchange" in subparagraph 38(*a.1*)(i) of the Act, as enacted by subsection (1), shall be read as a reference to "prescribed stock exchange".

7. (1) Paragraph 53(1)(*e*) of the Act is amended by striking out the word "and" at the end of subparagraph (xii), by adding the word "and" at the end of subparagraph (xiii) and by adding the following after subparagraph (xiii):

(xiv) the total of all amounts each of which is the amount of the taxpayer's taxable earnings base adjustment (within the meaning assigned by subsection 18.2(1)) in respect of an interest in the partnership for a taxation year that ended before that time;

(2) Paragraph 53(2)(*c*) of the Act is amended by striking out the word "and" at the end of subparagraph (xi), by adding the word "and" at the end of subparagraph (xii) and by adding the following after subparagraph (xii):

(xiii) the lesser of

(A) the total of all amounts each of which is the amount of a dividend that is included in computing the income of the taxpayer under section 93.1 in respect of the partnership for a taxation year that ended before that time, and

(B) the total of all amounts each of which is

(I) an amount deducted by the taxpayer under subsection 91(5.2) for a taxation year that ended before that time in respect of a dividend included in computing the amount determined under clause (A), or

(II) twice the amount deducted by the taxpayer under subsection 91(5.3) for a taxation year that ended before that time in respect of the disposition of a share on which a dividend included in computing the amount determined under clause (A) was paid;

(3) Subsections (1) and (2) apply after 2011.

8. (1) Paragraph 56(3)(*a*) of the Act is replaced by the following:

(*a*) the total of all amounts each of which is the amount included under subparagraph (1)(*n*)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment

(i) in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the taxation year, for the immediately preceding taxation year or for the following taxation year, or

(ii) in an elementary or secondary school educational program,

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

9. (1) Subsection 60(*x*) of the Act is replaced by the following:

(*x*) the total of all amounts each of which is an amount paid by the taxpayer in the year as a repayment, under the *Canada Education Savings Act* or under a designated provincial program (as defined in subsection 146.1(1)), of an amount that was included because of subsection 146.1(7) in computing the taxpayer's income for the year or a preceding taxation year; and

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

10. (1) Paragraphs (*h*) and (*i*) of the definition "principal-business corporation" in subsection 66(15) of the Act are replaced by the following:

(*h*) the generation of energy using property described in Class 43.1 or 43.2 of Schedule II to the regulations, or any combination thereof, and

(*i*) the development of projects for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in each project would be the capital cost of property described in Class 43.1 or 43.2 of Schedule II to the regulations or any combination thereof,

(2) Subsection (1) applies on and after February 23, 2005.

11. (1) The portion of subsection 67.1(1) of the Act before paragraph (*a*) is replaced by the following:

Expenses for food, etc.

67.1 (1) Subject to subsection (1.1), for the purposes of this Act, other than sections 62, 63, 118.01 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50 per cent of the lesser of

(2) Section 67.1 of the Act is amended by adding the following after subsection (1):

Expenses for food and beverages of long-haul truck drivers

(1.1) An amount paid or payable by a long-haul truck driver in respect of the consumption of food or beverages by the driver during an eligible travel period of the driver is deemed to be the amount determined by multiplying the specified percentage in respect of the amount so paid or payable by the lesser of

(*a*) the amount so paid or payable, and

(*b*) a reasonable amount in the circumstances.

(3) Section 67.1 of the Act is amended by adding the following after subsection (4):

Definitions

(5) The following definitions apply for the purpose of this section.

"eligible travel period" « *période de déplacement admissible* »

"eligible travel period" in respect of a long-haul truck driver is a period during which the driver is away from the municipality or metropolitan area where the specified place in respect of the driver is located for a period of at least 24 continuous hours for the purpose of driving a long-haul truck that transports goods to, or from, a location that is beyond a radius of 160 kilometres from the specified place.

"long-haul truck " « *grand routier* »

"long-haul truck " means a truck or a tractor that is designed for hauling freight and that has a gross vehicle weight rating (as that term is defined in subsection 2(1) of the *Motor Vehicle Safety Regulations*) that exceeds 11,788 kilograms.

"long-haul truck driver" « *conducteur de grand routier* »

"long-haul truck driver" means an individual whose principal business or principal duty of employment is driving a long-haul truck that transports goods.

"specified percentage" « *pourcentage déterminé* »

"specified percentage" in respect of an amount paid or payable is, (*a*) 60 per cent, if the amount is paid or becomes payable on or after March 19, 2007 and before 2008;

(*b*) 65 per cent, if the amount is paid or becomes payable in 2008;

(*c*) 70 per cent, if the amount is paid or becomes payable in 2009;

(*d*) 75 per cent, if the amount is paid or becomes payable in 2010; and

(*e*) 80 per cent, if the amount is paid or becomes payable after 2010.

"specified place"
« endroit déterminé »

"specified place" means, in the case of an employee, the employer's establishment to which the employee ordinarily reports to work is located and, in the case of an individual whose principal business is to drive a long-haul truck to transport goods, the place where the individual resides.

(4) Subsections (1) to (3) apply to amounts that are paid, or become payable, on or after March 19, 2007.

12. (1) Paragraph (*b*) of the definition "excluded security" in subsection 80(1) of the Act is replaced by the following:

(*b*) a share issued by the corporation to the person under the terms of the debt, where the debt was a bond, debenture or note listed on a designated stock exchange in Canada and the terms for the conversion to the share were not established or substantially modified after the later of February 22, 1994 and the time that the bond, debenture or note was issued;

(2) Subsection (1) applies on and after the day on which this Act is assented to.

13. (1) Paragraph (*a*) of the definition "public corporation" in subsection 89(1) of the Act is replaced by the following:

(*a*) a corporation that is resident in Canada at the particular time if at that time a class of shares of the capital stock of the corporation is listed on a designated stock exchange in Canada,

(2) Subsection (1) applies on and after the day on which this Act is assented to.

14. (1) Section 91 of the Act is amended by adding the following after subsection (5):

Deduction of dividend by shareholder

(5.1) Where in a taxation year a corporation resident in Canada receives a dividend on a share of the capital stock of a corporation that was at any time a foreign affiliate of the corporation and subsection (5) does not apply in respect of that dividend, there may be deducted, in respect of such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate, in computing the corporation's income for the year, the lesser of

(*a*) the amount, if any, by which that portion of the dividend exceeds the amount, if any, deductible in respect of the dividend under paragraph 113(1)(*b*), and

(*b*) the amount, if any, by which

(i) the total of all amounts required under subparagraph 92(1)(*a*)(ii) to be added in computing the adjusted cost base to the taxpayer of the share before the dividend was so received by the corporation

exceeds

(ii) the total of all amounts required under paragraph 92(1)(*b*) to be deducted in computing the adjusted cost base to the taxpayer of the share before the dividend was so received by the taxpayer.

Deduction of dividend by member of partnership

(5.2) Where in a taxation year a corporation is deemed under section 93.1 to have received a dividend from a foreign affiliate, there may be deducted, in respect of such portion of the dividend as is prescribed to have been paid out of the taxable surplus of the affiliate, in computing the corporation's income for the year, the lesser of

(*a*) the amount, if any, by which that portion of the dividend exceeds the amount, if any, deductible in respect of the dividend under paragraph 113(1)(*b*), and

(*b*) the amount, if any, by which

(i) the total of all amounts required under subparagraph 53(1)(*e*)(xiv) to be added in computing the adjusted cost base to the taxpayer of the partnership interest that are reasonably attributable to a share in respect of which the dividend was paid

exceeds

(ii) the total of all amounts required under subparagraph 53(2)(*c*)(xiii) to be deducted in computing the adjusted cost base to the taxpayer of the partnership interest that are reasonably attributable to a share in respect of which the dividend was paid..

Deduction of capital gain by member of partnership

(5.3) Where in a taxation year a taxpayer is a member of a partnership, there may be deducted from the taxpayer's income for the taxation year an amount equal to the lesser of

(*a*) ½ the amount of the taxpayer's specified proportion (within the meaning of paragraph 18.2(10)(*b*)) of any capital gain that is attributable to a disposition by the partnership of a share of the capital stock of a corporation, and

(*b*) the amount, if any, by which

(i) the total of all amounts required under subparagraph 53(1)(*e*)(xiv) to be added in computing the adjusted cost base to the taxpayer of its interest in the partnership that are reasonably attributable to the share

exceeds

(ii) the total of all amounts required under subparagraph 53(2)(*c*)(xiii) to be deducted in computing the adjusted cost base to the taxpayer of the partnership interest that are reasonably attributable to the share.

(2) Subsection (1) applies after 2011.

15. (1) Subsection 92(1) of the Act is replaced by the following:

Adjusted cost base of share of foreign affiliate

92. (1) In computing, at any time in a taxation year, the adjusted cost base to a taxpayer resident in Canada of any share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer,

(*a*) there shall be added in respect of that share

(i) any amount included in respect of that share under subsection 91(1) or (3) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been required to have been so included in computing the taxpayer's income but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), and

(ii) the taxable earnings base adjustment (as defined in subsection 18.2(1)) of the taxpayer in respect of the share for the year or any preceding taxation year; and

(*b*) there shall be deducted in respect of that share

(i) any amount deducted by the taxpayer under subsection 91(2) or (4), and

(ii) any dividend received by the taxpayer before that time, to the extent of the amount deducted by the taxpayer, in respect of the dividend, under subsection 91(5) or 91(5.1)

in computing the taxpayer's income for the year or any preceding taxation year (or that would have been deductible by the taxpayer but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada,1952).

(2) Subsection (1) applies after 2011.

16. (1) The definitions "active business", "controlled foreign affiliate", "income from an active business" and "income from property" in subsection 95(1) of the Act are replaced by the following:

"active business" « *entreprise exploitée activement* »

"active business" of a foreign affiliate of a taxpayer means any business carried on by the foreign affiliate other than

(*a*) an investment business carried on by the foreign affiliate,

(*b*) a business that is deemed by subsection (2) to be a business other than an active business carried on by the foreign affiliate, or

(*c*) a non-qualifying business of the foreign affiliate;

"controlled foreign affiliate" « *société étrangère affiliée contrôlée* »

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada, means

(*a*) a foreign affiliate of the taxpayer that is, at that time, controlled by the taxpayer, (*b*) a foreign affiliate of the taxpayer that would, at that time, be controlled by the taxpayer if the taxpayer owned

(i) all of the shares of the capital stock of the foreign affiliate that are owned at that time by the taxpayer,

(ii) all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with the taxpayer,

(iii) all of the shares of the capital stock of the foreign affiliate that are owned at that time by the persons (each of whom is referred to in this definition as a "relevant Canadian shareholder"), in any set of persons not exceeding four (which set of persons shall be determined without reference to the existence of or the absence of any relationship, connection or action in concert between those persons), who

(A) are resident in Canada,

(B) are not the taxpayer or a person described in subparagraph (ii), and

(C) own, at that time, shares of the capital stock of the foreign affiliate, and

(iv) all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with any relevant Canadian shareholder, or

(*c*) a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(*h*);

"income from an active business"
« revenu provenant d'une entreprise exploitée activement »

"income from an active business" of a foreign affiliate of a taxpayer for a taxation year includes the foreign affiliate's income for the taxation year that pertains to or is incident to that active business but does not include

(*a*) the foreign affiliate's income from property for the taxation year,

(*b*) the foreign affiliate's income for the taxation year from a business that is deemed by subsection (2) to be a business other than an active business of the foreign affiliate, or

(*c*) the foreign affiliate's income from a non-qualifying business of the foreign affiliate for the taxation year;

"income from property"
« revenu de biens »

"income from property" of a foreign affiliate of a taxpayer for a taxation year includes the foreign affiliate's income for the taxation year from an investment business and the foreign affiliate's income for the taxation year from an adventure or concern in the nature of trade, but does not include

(*a*) the foreign affiliate's income for the taxation year from a business that is deemed by subsection (2) to be a business other than an active business of the foreign affiliate, or

(*b*) the foreign affiliate's income for the taxation year that pertains to or is incident to

(i) an active business of the foreign affiliate, or

(ii) a non-qualifying business of the foreign affiliate;

(2) The portion of the definition "excluded property" in subsection 95(1) of the Act before paragraph (*a*) of that definition and paragraphs (*a*) to (*c*) of that definition are replaced by the following:

" excluded property"
« *bien exclu* »

" excluded property", at a particular time, of a foreign affiliate of a taxpayer means any property of the foreign affiliate that is

(*a*) used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business carried on by it,

(*b*) shares of the capital stock of another foreign affiliate of the taxpayer where all or substantially all of the fair market value of the property of the other foreign affiliate is attributable to property, of that other foreign affiliate, that is excluded property,

(*c*) property all or substantially all of the income from which is, or would be, if there were income from the property, income from an active business (which, for this purpose, includes income that would be deemed to be income from an active business by paragraph (2)(*a*) if that paragraph were read without reference to subparagraph (v)), or

(*c*.1) property arising under or as a result of an agreement that

(i) provides for the purchase, sale or exchange of currency, and

(ii) either

(A) can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to an amount that was receivable under an agreement that relates to the sale of excluded property or with respect to an amount that was receivable and was a property described in paragraph (*c*), of fluctuations in the value of the currency in which the amount receivable was denominated, or

(B) can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to any of the following amounts, of fluctuations in the value of the currency in which that amount was denominated:

(I) an amount that was payable under an agreement that relates to the purchase of property that (at all times between the time of the acquisition of the property and the particular time) is excluded property of the affiliate,

(II) an amount of indebtedness, to the extent that the proceeds derived from the issuance or incurring of the indebtedness can reasonably be considered to have been used to acquire property that (at all times between the time of the acquisition of that property and the particular time) is excluded property of the affiliate, or

(III) an amount of indebtedness, to the extent that the proceeds derived from the issuance or incurring of the indebtedness can reasonably be considered to have been used to repay the outstanding balance of

1. an amount that, immediately before the time of that repayment, is described by subclause (I),
2. an amount of indebtedness of the affiliate that, immediately before the time of that repayment, is described by subclause (II), or
3. an amount of indebtedness of the affiliate that, immediately before the time of that repayment, is described by this subclause,

(3) The portion of the description of A in the definition "foreign accrual property income" in subsection 95(1) of the Act before paragraph (*a*) of that description is replaced by the following:

A is the amount that would, if section 80 did not apply to the affiliate for the year or a preceding taxation year, be the total of all amounts, each of which is the affiliate's income for the year from property, the affiliate's income for the year from a business other than an active business or the affiliate's income for the year from a non-qualifying business of the affiliate, in each case that amount being determined as if each amount described in clause (2)(*a*)(ii)(D) that was paid or payable, directly or indirectly, by the affiliate to another foreign affiliate of the taxpayer or of a person with whom the taxpayer does not deal at arm's length were nil where an amount in respect of the income derived by the other foreign affiliate from that amount that was paid or payable to it by the affiliate was added in computing its income from an active business, other than

(4) The description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

D is the total of all amounts, each of which is the affiliate's loss for the year from property, the affiliate's loss for the year from a business other than an active business of the affiliate or the affiliate's loss for the year from a non-qualifying business of the affiliate, in each case that amount being determined as if there were not included in the affiliate's income any amount described in any of paragraphs (*a*) to (*d*) of the description of A and as if each amount described in clause (2)(*a*)(ii)(D) that was paid or payable, directly or indirectly, by the affiliate to another foreign affiliate of the taxpayer or of a person with whom the taxpayer does not deal at arm's length were nil where an amount in respect of the income derived by the other foreign affiliate from that amount that was paid or payable to it by the affiliate was added in computing its income from an active business,

(5) The description of E in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

E is the amount of the affiliate's allowable capital losses for the year from dispositions of property (other than excluded property) that can reasonably be considered to have accrued after its 1975 taxation year,

(6) The portion of the definition "investment business" in subsection 95(1) of the Act before paragraph (*a*) is replaced by the following:

"investment business"
« entreprise de placement »

"investment business" of a foreign affiliate of a taxpayer means a business carried on by the foreign affiliate in a taxation year (other than a business deemed by subsection (2) to be a business other than an active business carried on by the foreign affiliate and other than a non-qualifying business of the foreign affiliate) the principal purpose of which is to derive income from property (including interest, dividends, rents, royalties or any similar returns or substitutes for such interest, dividends, rents, royalties or returns), income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of investment property, unless it is established by the taxpayer or the foreign affiliate that, throughout the period in the taxation year during which the business was carried on by the foreign affiliate,

(7) Subparagraph (*a*)(i) of the definition "investment business" in subsection 95(1) of the Act is replaced by the following:

(i) a business carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(A) of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(B) of the country in which the business is principally carried on, or

(C) if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, or

(8) The definition "investment business" in subsection 95(1) of the Act is amended by striking out the word "and" at the end of paragraph (*a*) and by replacing paragraph (*b*) with the following:

(*b*) either

(i) the affiliate (otherwise than as a member of a partnership) carries on the business (the affiliate being, in respect of those times, in that period of the year, that it so carries on the business, referred to in paragraph (*c*) as the "operator"), or

(ii) the affiliate carries on the business as a qualifying member of a partnership (the partnership being, in respect of those times, in that period of the year, that the affiliate so carries on the business, referred to in paragraph (*c*) as the "operator"), and

(*c*) the operator employs

(i) more than five employees full time in the active conduct of the business, or

(ii) the equivalent of more than five employees full time in the active conduct of the business taking into consideration only

(A) the services provided by employees of the operator, and

(B) the services provided outside Canada to the operator by any one or more persons each of whom is, during the time at which the services were performed by the person, an employee of

(I) a corporation related to the affiliate (otherwise than because of a right referred to in paragraph 251(5)(*b*)),

(II) in the case where the operator is the affiliate,

1. a corporation (referred to in this subparagraph as a "providing shareholder") that is a qualifying shareholder of the affiliate,

2. a designated corporation in respect of the affiliate, or

3. a designated partnership in respect of the affiliate, and

(III) in the case where the operator is the partnership described in subparagraph (*b*)(ii),

1. any person (referred to in this subparagraph as a "providing member") who is a qualifying member of that partnership,

2. a designated corporation in respect of the affiliate, or

3. a designated partnership in respect of the affiliate,

if the corporations referred to in clause (B)(I) and the designated corporations, designated partnerships, providing shareholders or providing members referred to in subclauses (B)(II) and (III) receive compensation from the operator for the services provided to the operator by those employees the value of which is not less than the cost to those corporations, partnerships, shareholders or members of the compensation paid or accruing to the benefit of those employees that performed the services during the time at which the services were performed by those employees;

(9) Subsection 95(1) of the Act is amended by adding the following in alphabetical order:

"calculating currency" « *monnaie de calcul* »

"calculating currency" for a taxation year of a foreign affiliate of a taxpayer resident in Canada means

(*a*) the currency of the country in which the foreign affiliate is resident throughout the taxation year, or

(*b*) such currency (other than the currency described by paragraph (*a*)) that the taxpayer establishes to be reasonable in the circumstances;

"calculating currency exchange rate" *« taux de change de la monnaie de calcul »*

"calculating currency exchange rate", on a particular day in respect of the exchange of a currency (referred to in this definition as the "other currency") other than the calculating currency of the foreign affiliate for the calculating currency of the taxpayer for a taxation year, means the rate of exchange (calculated by reference to rates of exchange quoted by the Bank of Canada at noon on the particular day) for the exchange of a unit of the other currency for a unit of the calculating currency of the taxpayer;

"Canadian currency exchange rate" *« taux de change du dollar canadien »*

"Canadian currency exchange rate", on a particular day in respect of the exchange of a currency (referred to in this definition as the "other currency") other than Canadian currency for Canadian currency, means the rate of exchange (quoted by the Bank of Canada at noon on the particular day) for the exchange of a unit of the other currency for a unit of Canadian currency;

"designated acquired corporation" *« société acquise désignée »*

"designated acquired corporation", in respect of a taxpayer, means

(*a*) where the taxpayer was formed as a consequence of an amalgamation of two or more corporations (each such corporation being referred to in this paragraph as a "predecessor corporation") to which section 87 applied, a predecessor corporation if, as a result of the amalgamation or of a series of transactions or events that includes the amalgamation, control of the predecessor corporation was acquired by a person or a group of persons that

(i) immediately after the amalgamation, controlled the taxpayer, and

(ii) immediately before the amalgamation or the commencement of that series, as the case may be,

(A) did not control the predecessor corporation, and

(B) dealt at arm's length with the person or the group of persons that, immediately before the amalgamation or the commencement of that series, as the case may be, controlled the predecessor corporation, or

(*b*) a corporation (referred to in this paragraph as the "discontinuing corporation") that was wound-up into the taxpayer in a winding-up to which subsection 88(1) applied if, as a result of the winding-up or of a series of transactions or events that includes the winding-up, control of the discontinuing corporation was acquired by a person or a group of persons that

(i) immediately after the winding-up, controlled the taxpayer, and

(ii) immediately before the winding-up or the commencement of that series, as the case may be,

(A) did not control the discontinuing corporation, and

(B) dealt at arm's length with the person or the group of persons that, immediately before the winding-up or the commencement of that series, as the case may be, controlled the discontinuing corporation;

"designated taxable Canadian property" « *bien canadien imposable désigné* »

"designated taxable Canadian property", at any time, of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to in this definition as the "holder") means a taxable Canadian property in respect of which, if it were disposed of at that time by the holder, the foreign affiliate's portion of the holder's capital gain or income (if there were such a capital gain or income) from the disposition would

(*a*) be included in computing the foreign affiliate's taxable income earned in Canada for a taxation year under subparagraph 115(1)(*a*)(ii) or (iii), and

(*b*) not be exempt, because of a tax treaty with a country, from tax under this Part;

"eligible trust" « *fiducie admissible* »

"eligible trust", at any time, means a trust, other than a trust

(*a*) created or maintained for charitable purposes,

(*b*) governed by an employee benefit plan,

(*c*) described in paragraph (*a.1*) of the definition "trust" in subsection 108(1),

(*d*) governed by a salary deferral arrangement,

(*e*) operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits, or

(*f*) where the amount of income or capital that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power;

"entity" « *entité* »

"entity"includes an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust;

"exempt trust" « *fiducie exonérée* »

"exempt trust", at a particular time in respect of a taxpayer resident in Canada, means a trust that, at that time, is a trust under which the interest of each beneficiary under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

(*a*) the trust is an eligible trust,

(*b*) there are at least 150 beneficiaries each of whom holds a specified fixed interest, in the trust, that has a fair market value of at least $500, and

(*c*) the total of all amounts each of which is the fair market value of an interest as a beneficiary under the trust held by a specified purchaser in respect of the taxpayer is not more than 10% of the total fair market value of all interests as a beneficiary under the trust;

"income from a non-qualifying business"
« revenu provenant d'une entreprise admissible »

"income from a non-qualifying business" of a foreign affiliate of a taxpayer resident in Canada for a taxation year includes the foreign affiliate's income for the taxation year that pertains to or is incident to that non-qualifying business, but does not include

(*a*) the foreign affiliate's income from property for the taxation year, or

(*b*) the foreign affiliate's income for the taxation year from a business that is deemed by subsection (2) to be a business other than an active business of the foreign affiliate;

"non-qualifying business"
« entreprise non admissible »

"non-qualifying business" of a foreign affiliate of a taxpayer at any time means a business carried on by the foreign affiliate through a permanent establishment in a jurisdiction that, at the end of the foreign affiliate's taxation year that includes that time, is a non-qualifying country, other than

(*a*) an investment business of the foreign affiliate, or

(*b*) a business that is deemed by subsection (2) to be a business other than an active business of the foreign affiliate;

"non-qualifying country"
« pays non admissible »

"non-qualifying country" at any time means a country or other jurisdiction with which

(*a*) Canada does not have a tax treaty at that time,

(*b*) Canada does not have a comprehensive tax information exchange agreement that is in force and has effect at that time, and

(*c*) Canada has, more than 60 months before that time, either

(i) begun negotiations for a comprehensive tax information exchange agreement (unless that time is before 2014 and Canada was, on March 19, 2007, in the course of negotiating a comprehensive tax information exchange agreement with that jurisdiction), or

(ii) sought, by written invitation, to enter into negotiations for a comprehensive tax information exchange agreement (unless that time is before 2014 and Canada was, on March 19, 2007, in the course of negotiating a comprehensive tax information exchange agreement with that jurisdiction);

"relevant non-arm's length entity"
« entité avec lien de dépendance »

"relevant non-arm's length entity", in respect of a taxpayer, at any time means

(*a*) the taxpayer,

(*b*) an entity with whom the taxpayer does not deal at arm's length at that time, (*c*) where the taxpayer is a corporation that is deemed, because of section 87 or 88, for any purpose, to be at that time the same person as and a continuation of another corporation that is not a designated acquired corporation in respect of the taxpayer, that other corporation, or

(*d*) where an entity described by paragraph (*b*) is a corporation that is deemed, because of section 87 or 88, for any purpose, to be at that time the same person as and a continuation of another corporation that is not a designated acquired corporation in respect of the corporation, that other corporation;

"specified fixed interest" « *participation fixe désignée* »

"specified fixed interest", at any time, of an entity in a trust, means an interest of the entity as a beneficiary under the trust if

(*a*) the interest includes, at that time, rights of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income and capital of the trust,

(*b*) the interest was issued by the trust, at or before that time, to an entity, in exchange for consideration and the fair market value, at the time at which the interest was issued, of that consideration was equal to the fair market value, at the time at which it was issued, of the interest,

(*c*) the only manner in which any part of the interest may cease to be the entity's is by way of a disposition (determined without reference to paragraph (*i*) of the definition "disposition" in subsection 248(1) and paragraph 248(8)(*c*)) by the entity of that part, and

(*d*) no amount of income or capital of the trust that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power;

"specified purchaser" « *acheteur déterminé* »

"specified purchaser", at any time, in respect of a particular taxpayer resident in Canada, means an entity that is, at that time,

(*a*) the particular taxpayer,

(*b*) an entity resident in Canada with which the particular taxpayer does not deal at arm's length,

(*c*) a foreign affiliate of an entity described in any of paragraphs (*a*) and (*b*) and (*d*) to (*f*),

(*d*) a trust (other than an exempt trust) in which an entity described in any of paragraphs (*a*) to (*c*) and (*e*) and (*f*) is beneficially interested,

(*e*) a partnership of which an entity described in any of paragraphs (*a*) to (*d*) and (*f*) is a member, or

(*f*) an entity (other than an entity described in any of paragraphs (*a*) to (*e*)) with which an entity described in any of paragraphs (*a*) to (*e*) does not deal at arm's length;

"taxable Canadian business"
« entreprise canadienne imposable »

"taxable Canadian business", at any time, of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to in this definition as the "operator"), means a business the foreign affiliate's portion of the operator's income from which would, if there were income from the business,

(*a*) be included in computing the foreign affiliate's taxable income earned in Canada for a taxation year under subparagraph 115(1)(*a*)(ii),and

(*b*) not be exempt, because of a tax treaty with a country, from tax under this Part;

"transitional exchange rate"
« taux de change transitoire »

"transitional exchange rate" for a particular taxation year of a foreign affiliate of a taxpayer means the average, for the 12 month period ending on the last day of the particular taxation year, of the rate of exchange (calculated by reference to the rates of exchange quoted by the Bank of Canada at noon on each business day in the period) for the exchange of a unit of the calculating currency for the taxation year of the foreign affiliate that immediately follows the particular taxation year for a unit of the calculating currency for the particular taxation year;

(10) Paragraph 95(2)(*a*) of the Act is replaced by the following:

(*a*) in computing the income or loss from an active business for a taxation year of a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or that is a controlled foreign affiliate of the taxpayer throughout the year, there shall be included any income or loss of the particular foreign affiliate for the year from sources in a country other than Canada that would otherwise be income or loss from property of the particular foreign affiliate for the year to the extent that

(i) the income or loss

(A) is derived by the particular foreign affiliate from activities that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a life insurance corporation that is resident in Canada throughout the year and that is

1. the taxpayer,
2. a person who controls the taxpayer,
3. a person controlled by the taxpayer, or
4. a person controlled by a person who controls the taxpayer, and

(B) would be included in computing the amount prescribed to be the earnings or loss, from an active business carried on in a country other than Canada, of

(I) that other foreign affiliate referred to in subclause (A)(I) if the income were earned by it, or

(II) the life insurance corporation referred to in subclause (A)(II) if that life insurance corporation were a foreign affiliate of the taxpayer and the income were earned by it,

(ii) the income or loss is derived from amounts that were paid or payable, directly or indirectly, to the particular foreign affiliate or a partnership of which the particular foreign affiliate was a member

(A) by a life insurance corporation that is resident in Canada and that is the taxpayer, a person who controls the taxpayer, a person controlled by the taxpayer or a person controlled by a person who controls the taxpayer, to the extent that those amounts that were paid or payable were for expenditures that are deductible in a taxation year of the life insurance corporation by the life insurance corporation in computing its income or loss for a taxation year from carrying on its life insurance business outside Canada and are not deductible in computing its income or loss for a taxation year from carrying on its life insurance business in Canada,

(B) by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, to the extent that those amounts that were paid or payable are for expenditures that were deductible by that other foreign affiliate in computing the amounts prescribed to be its earnings or loss for a taxation year from an active business (other than an active business carried on in Canada), or

(II) a partnership of which another foreign affiliate of the taxpayer (in respect of which other foreign affiliate the taxpayer has a qualifying interest throughout the year) is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that other foreign affiliate was a member of the partnership, to the extent that those amounts that were paid or payable are for expenditures that are deductible by the partnership in computing that other foreign affiliate's share of any income or loss of the partnership, for a fiscal period, that is included in computing the amounts prescribed to be that other foreign affiliate's earnings or loss for a taxation year from an active business (other than an active business carried on in Canada),

(C) by a partnership of which the particular foreign affiliate is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which the particular foreign affiliate was a member of the partnership, to the extent that those amounts that were paid or payable are for expenditures that are deductible by the partnership in computing the particular foreign affiliate's share of any income or loss of the partnership, for a fiscal period, that is included in computing the amounts prescribed to be the particular foreign affiliate's earnings or loss for a taxation year from an active business (other than an active business carried on in Canada), or

(D) by another foreign affiliate (referred to in this clause as the "second affiliate") of the taxpayer — in respect of which the taxpayer has a qualifying interest throughout the year — to the extent that the amounts are paid or payable by the second affiliate, in respect of any particular period in the year,

(I) under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or

(II) on an amount payable for property acquired for the purpose of gaining or producing income from property

where

(III) the property is, throughout the particular period, excluded property of the second affiliate that is shares of the capital stock of a corporation (referred to in this clause as the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest,

(IV) the second affiliate and the third affiliate are resident in the same country for each of their taxation years (each of which taxation years is referred to in subclause (V) as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year, and

(V) in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

1. that affiliate is subject to income taxation in that country in that relevant taxation year, or

2. the members or shareholders of that affiliate (which, for the purpose of this sub-subclause, includes a person that has, directly or indirectly, an interest, or for civil law a right, in a share of the capital stock of, or in an equity interest in, the affiliate) at the end of that relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends,

(iii) the income or loss is derived by the particular foreign affiliate from the factoring of trade accounts receivable acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year to the extent that the accounts receivable arose in the course of an active business carried on in a country other than Canada by that other foreign affiliate,

(iv) the income or loss is derived by the particular foreign affiliate from loans or lending assets acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, to the extent that the loans or lending assets arose in the course of an active business carried on in a country other than Canada by that other foreign affiliate,

(v) the income or loss is derived by the particular foreign affiliate from the disposition of excluded property that is not capital property, or

(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce

(A) its risk — with respect to an amount that increases the amount required by this paragraph to be included in computing the particular foreign affiliate's income for a taxation year from an active business or that decreases the amount required by this paragraph to be included in computing the particular foreign affiliate's loss for a taxation year from an active business — of fluctuations in the value of the currency in which the amount was denominated, or

(B) its risk — with respect to an amount that decreases the amount required by this paragraph to be included in computing the particular foreign affiliate's income for a taxation year from an active business or that increases the amount required by this paragraph to be included in computing the particular foreign affiliate's loss for a taxation year from an active business — of fluctuations in the value of the currency in which the amount was denominated;

(11) Subparagraphs 95(2)(*a.1*)(i) and (ii) of the Act are replaced by the following:

(i) it is reasonable to conclude that the cost to any person of the property (other than property that is designated property) is relevant in computing the income from a business carried on by the taxpayer or by a person resident in Canada with whom the taxpayer does not deal at arm's length or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length, and

(ii) the property was neither

(A) manufactured, produced, grown, extracted or processed in the country

(I) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(II) in which the affiliate's business is principally carried on, nor

(B) an interest in real property, or a real right in an immoveable, located in, or a foreign resource property in respect of, the country

(I) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(II) in which the affiliate's business is principally carried on,

(12) Paragraph 95(2)(*b*) of the Act is replaced by the following:

(*b*) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services

(i) is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, to the extent that the amounts paid or payable in consideration for those services or for the undertaking to provide services

(A) are deductible, or can reasonably be considered to relate to amounts that are deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a foreign affiliate, or

(II) another taxpayer who does not deal at arm's length with

1. the affiliate, or
2. any taxpayer of whom the affiliate is a foreign affiliate, or

(B) are deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a foreign affiliate of

(I) any taxpayer of whom the affiliate is a foreign affiliate, or

(II) another taxpayer who does not deal at arm's length with

1. the affiliate, or
2. any taxpayer of whom the affiliate is a foreign affiliate, and

(ii) is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, to the extent that the services are, or are to be, performed by

(A) any taxpayer of whom the affiliate is a foreign affiliate,

(B) another taxpayer who does deal at arm's length with

(I) the affiliate, or

(II) any taxpayer of whom the affiliate is a foreign affiliate,

(C) a partnership any member of which is a person described in clause (A) or (B), or

(D) a partnership in which any person or partnership described in any of clauses (A) to (C) has, directly or indirectly, a partnership interest;

(13) Paragraph 95(2)(*f*) of the Act is replaced by the following:

(*f*) each capital gain, capital loss, taxable capital gain and allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from the disposition of property by any person or partnership is to be computed in respect of the taxpayer in accordance with this Act, read without reference to section 26 of the *Income Tax Application Rules* and (except to the extent that the context otherwise requires) as if the rules that apply to taxpayers resident in Canada apply to the foreign affiliate, except that, in computing any such capital gain, capital loss, taxable capital gain or allowable capital loss of the foreign affiliate from the disposition of property (other than a designated taxable Canadian property) by the person or partnership, there is not to be included the foreign affiliate's share of the portion of that gain or loss of the person or partnership that can reasonably be considered to have accrued during a period of time throughout which the property was held by any person or partnership that, throughout the period, was not

(i) a relevant non-arm's length entity in respect of the taxpayer,

(ii) a foreign affiliate of a relevant non-arm's length entity in respect of the taxpayer, or

(iii) a partnership a member of which is described by subparagraph (i) or (ii);

(*f*.1) the income or loss of a foreign affiliate of a taxpayer from property or the income or loss of a foreign affiliate of a taxpayer from a business other than an active business or from a non-qualifying business, for a taxation year is to be computed in respect of the taxpayer in accordance with this Act as if

(i) except to the extent that the context otherwise requires, the rules that apply to taxpayers resident in Canada apply to the foreign affiliate,

(ii) in determining "resident time" in the definition "cumulative foreign resource expense" in subsection 66.21(1), the foreign affiliate were at all times resident in Canada,

(iii) this Act were read without reference to

(A) subsections 14(1.01) to (1.03), 17(1) and 18(4), and

(B) section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership,

(iv) there were not included — in computing the foreign affiliate's income or loss from property (other than a designated taxable Canadian property) or a business (other than an active business or a taxable Canadian business) — the foreign affiliate's share of any portion of the income or loss that would be determined, if this Act were read without reference to this subparagraph, of any person or partnership from such property or such a business that can reasonably be considered to have accrued during a period of time throughout which that property or that business was property or a business of any person or partnership that, throughout the period, was not

(A) a relevant non-arm's length entity in respect of the taxpayer,

(B) a foreign affiliate of a relevant non-arm's length entity in respect of the taxpayer, or

(C) a partnership a member of which is described by clause (A) or (B), and

(v) where the foreign affiliate has disposed of foreign resource property in respect of a country in the year and the foreign affiliate has not made a designation in respect of the disposition in accordance with subparagraph 59(1)(*b*)(ii) for the year, there were designated in respect of the disposition by the foreign affiliate in accordance with subparagraph 59(1)(*b*)(ii) for the year an amount equal to the amount, if any, by which

(A) the amount determined under paragraph 59(1)(*a*) in respect of the disposition

exceeds

(B) the amount determined under subparagraph 59(1)(*b*)(i) in respect of the disposition;

(*f*.2) a foreign affiliate of a taxpayer resident in Canada shall determine

(i) each capital gain or capital loss or taxable capital gain or allowable capital loss of the foreign affiliate for a taxation year from the disposition, at any time, of a capital property that, at that time, was an excluded property of the foreign affiliate, in its calculating currency for the taxation year, and, where subsection 39(2) applies, as if the reference to "the currency or currencies of one or more countries other than Canada relative to Canadian currency" were read as a reference to "one or more currencies other than the calculating currency relative to the calculating currency" and the references in that subsection to "of a country other than Canada" were read as references to "of a country other than the country of the calculating currency",

(ii) its income or loss for a taxation year from an active business carried on by it in the taxation year in a country (other than Canada), in its calculating currency for the taxation year,

(iii) its income or loss that would, if this Act were read without reference to paragraph (*a*), be its income or loss from property for a taxation year that, under that paragraph, is included in computing its income or loss from an active business for the taxation year, in its calculating currency for the taxation year,

(iv) in its calculating currency for a taxation year,

(A) the amount of a distribution made by it or a dividend paid by it, in respect of a share of its capital stock, at any time in the taxation year,

(B) the amount for which a share of its capital stock was issued by it, or the amount of any contribution received by it in respect of a share of its capital stock, at any time in the taxation year, and

(C) the amount of a return, at any time in the taxation year, by it of amounts described by clause (B),

(v) in its calculating currency for a taxation year,

(A) the amount of a distribution made, or a dividend paid, in respect of a share of the capital stock of another foreign affiliate of the taxpayer (that is an excluded property of the foreign affiliate), that is received by the foreign affiliate at any time in the taxation year,

(B) the amount for which a share of the capital stock of another foreign affiliate of the taxpayer that is an excluded property of the taxpayer was issued to it, or any contribution in respect of such a share made by it, at any time in the taxation year, and

(C) the amount of a return, at any time in the taxation year, of amounts described by clause (B) that were received by the foreign affiliate,

(vi) each amount of a receipt or an expenditure, income or a deduction, a gain or a loss, an inclusion or an exclusion, a contribution or a return of contribution, and each other amount received, made, incurred, accrued or claimed, as the case may be, at any time in a particular taxation year of the foreign affiliate that is determined at a particular time in a taxation year in a currency other than the foreign affiliate's calculating currency for the particular taxation year, to the extent relevant in determining a particular amount described in any of subparagraphs (i), (ii), (iv) and (v) for a taxation year, by converting that amount to the foreign affiliate's calculating currency for the particular taxation year using the calculating currency exchange rate (on the day that includes that time) in respect of the exchange of the other currency for the foreign affiliate's calculating currency for the particular taxation year,

(vii) where the foreign affiliate's calculating currency for a particular taxation year is different from its calculating currency for the immediately following taxation year (referred to in this subparagraph as the "subsequent taxation year"), each amount of a receipt or an expenditure, income or a deduction, a gain or a loss, an inclusion or an exclusion, a contribution or a return of contribution, and each other amount received, made, incurred, accrued or claimed, as the case may be, at any time in the particular taxation year or a preceding taxation year, to the extent relevant in determining a particular amount described in any of subparagraphs (i), (ii), (iv) and (v) for any taxation year that begins after the particular taxation year, by converting that amount to the foreign affiliate's calculating currency for the subsequent taxation year by using the transitional exchange rate for the particular taxation year,

(viii) each capital gain or capital loss or taxable capital gain or allowable capital loss, for a taxation year, from the disposition, at any time, of a capital property that, at the time of disposition, was not an excluded property of the foreign affiliate, in Canadian currency,

(ix) its income or loss, for a taxation year, from property or its income or loss, for a taxation year, from a business that is deemed by this subsection to be a business other than an active business or from a non-qualifying business, in Canadian currency, and

(x) each amount of a receipt or an expenditure, income or a deduction, a gain or a loss, an inclusion or an exclusion, a contribution or a return of contribution, and each other amount received, made, incurred, accrued or claimed, as the case may be, at any time in a particular taxation year of the foreign affiliate that is determined at a particular time in a taxation year in a currency other than Canadian currency, to the extent relevant in determining a particular amount described in subparagraph (viii) or (ix) for a taxation year or in determining the foreign affiliate's foreign accrual property income for a taxation year, by converting that amount to Canadian currency using the Canadian currency exchange rate (on the day that includes that time) in respect of the exchange of the other currency for Canadian currency;

(14) Paragraph 95(2)(*g*) of the Act is replaced by the following:

(*g*) income earned, a loss incurred or a capital gain or capital loss realized, as the case may be, in a taxation year by a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year or a particular foreign affiliate of a taxpayer that is a controlled foreign affiliate of the taxpayer throughout the taxation year, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, is deemed to be nil if it is earned, incurred or realized in reference to any of the following sources:

(i) a debt obligation that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (which other foreign affiliate is referred to in this paragraph as a "qualified foreign affiliate") by the particular affiliate, or

(B) the particular affiliate by a qualified foreign affiliate,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or a qualified foreign affiliate (which particular affiliate or which qualified foreign affiliate is referred to in this subparagraph as the "issuing corporation") by the issuing corporation, or

(iii) the disposition to a qualified foreign affiliate of a share of the capital stock of another qualified foreign affiliate;

(*g.01*) any income, loss, capital gain or capital loss, derived by a foreign affiliate of a taxpayer under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the foreign affiliate to reduce its risk (with respect to any source, any particular income, gain or loss determined in reference to which is deemed by paragraph (*g*) to be nil) of fluctuations in the value of currency, is, to the extent of the absolute value of the particular income, gain or loss, deemed to be nil;

(*g.02*) in applying subsection 39(2) for the purpose of this subdivision (other than sections 94 to 94.4), the gains and losses of a foreign affiliate of a taxpayer in respect of excluded property are to be computed in respect of the taxpayer separately from the gains and losses of the foreign affiliate in respect of property that is not excluded property;

(*g.03*) if at any time a particular foreign affiliate referred to in paragraph (*g*) is a member of a partnership or a qualified foreign affiliate referred to in that paragraph is a member of a partnership,

(i) in applying this paragraph, where a debt obligation is owing at that time by a debtor to the partnership of which the particular foreign affiliate is a member, the debt obligation is deemed to be owing at that time by the debtor to the particular foreign affiliate in the proportion that the particular foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation,

(ii) in applying this paragraph, where a debt obligation is owing at that time to a creditor by the partnership of which the particular foreign affiliate is a member, the debt obligation is deemed to be owing at that time to the creditor by the particular foreign affiliate in the proportion that the particular foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation,

(iii) in applying paragraph (*g*) and this paragraph, where a debt obligation is owing at that time by a debtor to the partnership of which the qualified foreign affiliate is a member, the debt obligation is deemed to be owing at that time by the debtor to the qualified foreign affiliate in the proportion that the qualified foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation,

(iv) in applying paragraph (*g*) and this paragraph, where a debt obligation is owing at that time to a creditor by the partnership of which the qualified foreign affiliate is a member, the debt obligation is deemed to be owing at that time to the creditor by the qualified foreign affiliate in the proportion that the qualified foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation, and

(v) in computing the particular foreign affiliate's income or loss from a partnership, any income earned, loss incurred or capital gain or capital loss realized, as the case may be, by the partnership — in respect of the portion of a debt obligation owing to or owing by the partnership that is deemed by any of subparagraphs (i) to (iv) to be a debt obligation owing to or owing by the particular foreign affiliate (referred to in this subparagraph as the "allocated debt obligation") — because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, that is attributable to the allocated debt obligation is deemed to be nil to the extent that paragraph (*g*) would, if the rules in subparagraphs (i) to (iv) were applied, have applied to the particular foreign affiliate, to deem to be nil the income earned, loss incurred or capital gain or capital loss realized, as the case may be, by the particular foreign affiliate in respect of the allocated debt obligation, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency;

(15) Paragraph 95(2)(*i*) of the Act is replaced by the following:

(*i*) any income, gain or loss of a foreign affiliate of a taxpayer or of a partnership of which a foreign affiliate of a taxpayer is a member (which foreign affiliate or partnership is referred to in this paragraph as the "debtor"), for a taxation year or fiscal period of the debtor, as the case may be, is deemed to be income, a gain or a loss, as the case may be, from the disposition of an excluded property of the debtor, if the income, gain or loss is

(i) derived from the settlement or extinguishment of a debt of the debtor all or substantially all of the proceeds from which

(A) were used to acquire property, if at all times after the time at which the debt became debt of the debtor and before the time of that settlement or extinguishment, the property (or property substituted for the property) was property of the debtor and was, or would if the debtor were a foreign affiliate of the taxpayer be, excluded property of the debtor,

(B) were used at all times to earn income from an active business carried on by the debtor, or

(C) were used by the debtor for a combination of the uses described in clause (A) or (B),

(ii) derived from the settlement or extinguishment of a debt of the debtor all or substantially all of the proceeds from which were used to settle or extinguish a debt referred to in subparagraph (i) or in this subparagraph, or

(iii) derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the debtor to reduce its risk, with respect to a debt referred to in subparagraph (i) or (ii), of fluctuations in the value of the currency in which the debt was denominated;

(16) Subparagraph 95(2)(*l*)(iii) of the Act is replaced by the following:

(iii) the business is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(A) of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(B) of the country in which the business is principally carried on, or

(C) if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(17) Subsection 95(2) of the Act is amended by striking out the word "and" at the end of paragraph (*l*) and by adding the following after paragraph (*m*):

(*n*) in applying paragraphs (*a*) and (*g*) and subsections (2.2) and (2.21), in applying paragraph (*b*) of the description of A in the formula in the definition "foreign accrual property income" in subsection (1) and in applying paragraph (*d*) of the definition "exempt earnings", and paragraph (*c*) of the definition "exempt loss", in subsection 5907(1) of the Regulations, a non-resident corporation is deemed to be, at any time, a foreign affiliate of a particular corporation resident in Canada, and a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest, if at that time

(i) the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) to the particular corporation, and

(ii) that other corporation has a qualifying interest in respect of the non-resident corporation;

(*o*) a particular person is a qualifying member of a partnership at a particular time if, at that time, the particular person is a member of the partnership and

(i) throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership, the particular person is, on a regular, continuous and substantial basis

(A) actively engaged in those activities, of the principal business of the partnership carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of that principal business, or

(B) actively engaged in those activities, of a particular business carried on in that fiscal period by the particular person (otherwise than as a member of a partnership) that is similar to the principal business carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of the particular business, or

(ii) throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership

(A) the total of the fair market value of all partnership interests in the partnership owned by the particular person was equal to or greater than 1% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership, and

(B) the total of the fair market value of all partnership interests in the partnership owned by the particular person or persons (other than trusts) related to the particular person was equal to or greater than 10% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership;

(*p*) a particular person is a qualifying shareholder of a corporation at any time if throughout the period, in the taxation year of the corporation that includes that time, during which the particular person was a shareholder of the corporation

(i) the particular person owned 1% or more of the issued and outstanding shares (having full voting rights under all circumstances) of the capital stock of the corporation,

(ii) the particular person, or the particular person and persons (other than trusts) related to the particular person, owned 10% or more of the issued and outstanding shares (having full voting rights under all circumstances) of the capital stock of the corporation,

(iii) the total of the fair market value of all the issued and outstanding shares of the capital stock of the corporation owned by the particular person is 1% or more of the total fair market value of all the issued and outstanding shares of the capital stock of the corporation, and

(iv) the total of the fair market value of all the issued and outstanding shares of the capital stock of the corporation owned by the particular person or by persons (other than trusts) related to the particular person is 10% or more of the total fair market value of all the issued and outstanding shares of the capital stock of the corporation;

(*q*) in applying paragraphs (*o*) and (*p*),

(i) where interests in any partnership or shares of the capital stock of any corporation (which interests or shares are referred to in this subparagraph as "equity interests") are, at any time, property of a particular partnership or are deemed under this paragraph to be, at any time, property of the particular partnership, the equity interests are deemed to be owned at that time by each member of the particular partnership in a proportion equal to the proportion of the equity interests that

(A) the fair market value, at that time, of the member's partnership interest in the particular partnership

is of

(B) the fair market value, at that time, of all members' partnership interests in the particular partnership, and

(ii) where interests in a partnership or shares of the capital stock of a corporation (which interests or shares are referred to in this subparagraph as "equity interests") are, at any time, property of a non-discretionary trust (within the meaning assigned by subsection 17(15)) or are deemed under this paragraph to be, at any time, property of such a non-discretionary trust, the equity interests are deemed to be owned at that time by each beneficiary under that trust in a proportion equal to that proportion of the equity interests that

(A) the fair market value, at that time, of the beneficiary's beneficial interest in the trust

is of

(B) the fair market value, at that time, of all beneficial interests in the trust;

(*r*) in applying paragraph (*a*) and in applying paragraph (*d*) of the definition "exempt earnings", and paragraph (*c*) of the definition "exempt loss", in subsection 5907(1) of the Regulations, a partnership is deemed to be, at any time, a partnership of which a foreign affiliate — of a particular corporation resident in Canada and in respect of which foreign affiliate the particular corporation has a qualifying interest — is a qualifying member, if at that time

(i) a particular foreign affiliate — of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) to the particular corporation — is a member of the partnership,

(ii) that other corporation has a qualifying interest in respect of the particular foreign affiliate, and

(iii) the particular foreign affiliate is a qualifying member of the partnership;

(*s*) in applying the definition "investment business" in subsection (1), a particular corporation is, at any time, a designated corporation in respect of a foreign affiliate of a taxpayer, if at that time

(i) a qualifying shareholder of the foreign affiliate or a person related to such a qualifying shareholder is a qualifying shareholder of the particular corporation,

(ii) the particular corporation

(A) is controlled by a qualifying shareholder of the foreign affiliate, or

(B) would be controlled by a particular qualifying shareholder of the foreign affiliate if the particular qualifying shareholder of the foreign affiliate owned each share of the capital stock of the particular corporation that is owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate, and

(iii) the total of all amounts each of which is the fair market value of a share of the capital stock of the particular corporation owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate is greater than 50% of the total fair market value of all the issued and outstanding shares of the capital stock of the particular corporation;

(*t*) in applying the definition "investment business" in subsection (1) in respect of a business carried on by a foreign affiliate of a taxpayer in a taxation year, a particular partnership is, at any time, a designated partnership in respect of the foreign affiliate of the taxpayer, if at that time

(i) the foreign affiliate or a person related to the foreign affiliate is a qualifying member of the particular partnership, and

(ii) the total of all amounts — each of which is the fair market value of a partnership interest in the particular partnership held by the foreign affiliate, by a person related to the foreign affiliate or (where the foreign affiliate carries on, at that time, the business as a qualifying member of another partnership) by a qualifying member of the other partnership — is greater than 50% of the total fair market value of all partnership interests in the particular partnership owned by all members of the particular partnership;

(*u*) if any entity is (or is deemed by this paragraph to be) a member of a particular partnership that is a member of another partnership,

(i) the entity is deemed to be a member of the other partnership for the purpose of

(A) subparagraph (ii),

(B) applying the reference, in paragraph (*a*), to "a member" of a partnership,

(C) paragraphs (*a*.1) to (*b*), (*g.03*) and (*o*),

(D) the definitions "designated taxable Canadian property" and "taxable Canadian business" in subsection (1), and

(E) paragraphs (*b*) and (*c*) of the definition "investment business" in subsection (1), and

(ii) in applying paragraph (*g.03*) and the definitions "designated taxable Canadian property" and "taxable Canadian business" in subsection (1), the entity is deemed to have, directly, rights to the income or capital of the other partnership, to the extent of the entity's direct and indirect rights to that income or capital;

(*v*) in applying paragraph (*p*),

(i) where shares of the capital stock of any corporation (referred to in this paragraph as the "issuing corporation") are, at any time, owned by a corporation (referred to in this paragraph as the "holding corporation") or are deemed under this paragraph to be, at any time, owned by a corporation (referred to in this paragraph as the "holding corporation"), those shares are deemed to be owned at that time by each shareholder of the holding corporation in a proportion equal to the proportion of those shares that

(A) the fair market value, at that time, of the shares of the capital stock of the issuing corporation that are owned by the shareholder

is of

(B) the fair market value, at that time, of all the issued and outstanding shares of the capital stock of the issuing corporation, and

(ii) a person who is deemed by subparagraph (i) to own, at any time, shares of the capital stock of a corporation is deemed to be, at that time, a shareholder of the corporation;

(*w*) where a foreign affiliate of a corporation resident in Canada carries on an active business in more than one country,

(i) where the business is carried on in a country other than Canada, it is deemed to carry on that business in that country only to the extent that the profit or loss from that business can reasonably be attributed to a permanent establishment situated in that country, and

(ii) where the business is carried on in Canada, it is deemed to carry on that business in Canada only to the extent that the income from the active business is subject to tax under this Part;

(*x*) the loss from an active business, from a non-qualifying business or from property (as the case may be) of a foreign affiliate of a taxpayer resident in Canada for a taxation year is the amount of that loss, if any, that is computed by applying the provisions in this subdivision with respect to the computation of income from the active business, from the non-qualifying business or from property (as the case may be) of the foreign affiliate for the taxation year with any modifications that the circumstances require;

(*y*) in determining — for the purpose of paragraph (*a*) and for the purpose of applying subsections (2.2) and (2.21) for the purpose of applying that paragraph — whether a non-resident corporation is, at any time, a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest, where interests in any partnership or shares of the capital stock of any corporation (which interests or shares are referred to in this paragraph as "equity interests") are, at that time, property of a particular partnership or are deemed under this paragraph to be, at any time, property of the particular partnership, the equity interests are deemed to be owned at that time by each member of the particular partnership in a proportion equal to the proportion of the equity interests that

(i) the fair market value, at that time, of the member's partnership interest in the particular partnership

is of

(ii) the fair market value, at that time, of all members' partnership interests in the particular partnership; and

(*z*) where a particular foreign affiliate of a taxpayer — in respect of which the taxpayer has a qualifying interest or that is a controlled foreign affiliate of the taxpayer — is a member of a partnership, the particular foreign affiliate's foreign accrual property income or loss in respect of the taxpayer for a taxation year shall not include any income or loss of the partnership to the extent that the income or loss

(i) is attributable to the foreign accrual property income or loss of a foreign affiliate of the partnership that is also a foreign affiliate of the taxpayer (referred to in this paragraph as the "second foreign affiliate") in respect of which the taxpayer has a qualifying interest or that is a controlled foreign affiliate of the taxpayer, and

(ii) is, because of paragraph (*a*) as applied in respect of the taxpayer, included in computing the income or loss from an active business of the second foreign affiliate for a taxation year.

(18) Section 95 of the Act is amended by adding the following after subsection (2):

Rules for the definition "controlled foreign affiliate"

(2.01) In applying paragraph (*b*) of the definition "controlled foreign affiliate" in subsection (1) and in applying this subsection,

(*a*) shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, another corporation are deemed to be, at that time, owned by, or property of, as the case may be, each shareholder of the other corporation in the proportion that

(i) the fair market value at that time of the shares of the capital stock of the other corporation that, at that time, are owned by, or are property of, the shareholder

is of

(ii) the fair market value at that time of all the issued and outstanding shares of the capital stock of the other corporation;

(*b*) shares of the capital stock of a corporation that are, or are deemed by this subsection to be, at any time, property of a partnership, are deemed to be, at that time, owned by, or property of, as the case may be, each member of the partnership in the proportion that

(i) the fair market value at that time of the member's partnership interest in the partnership

is of

(ii) the fair market value at that time of all partnership interests in the partnership;

(*c*) shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a non-discretionary trust (within the meaning assigned by subsection 17(15)) other than an exempt trust (within the meaning assigned by subsection (1)) are deemed to be, at that time, owned by, or property of, as the case may be, each beneficiary of the trust in the proportion that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(*d*) all of the shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a particular trust (other than an exempt trust within the meaning assigned by subsection (1) or a non-discretionary trust within the meaning assigned by subsection 17(15)) are deemed to be, at that time, owned by, or property of, as the case may be,

(i) each beneficiary of the particular trust at that time, and

(ii) each settlor (within the meaning assigned by subsection 17(15)) in respect of the particular trust at that time.

Rule against double-counting

(2.02) In applying the assumption in paragraph (*b*) of the definition "controlled foreign affiliate" in subsection (1) in respect of a taxpayer resident in Canada to determine whether a foreign affiliate of the taxpayer is at any time a controlled foreign affiliate of the taxpayer, nothing in that paragraph or in subsection (2.01) is to be read or construed as requiring an interest, or for civil law a right, in a share of the capital stock of the foreign affiliate of the taxpayer owned at that time by the taxpayer to be taken into account more than once.

(19) Paragraph 95(2.1)(*c*) of the Act is replaced by the following:

(*c*) the affiliate entered into the agreements in the course of a business carried on by the affiliate, if

(i) the business is carried on by the affiliate principally in a country (other than Canada) and principally with persons with whom the affiliate deals at arm's length, and

(ii) the business activities of the affiliate are regulated in that country; and

(20) Subsection 95(2.2) of the Act is replaced by the following:

Rule for subsection (2)

(2.2) For the purpose of subsection (2), other than paragraphs (2)(*f*) and (*f*.1), a non-resident corporation that is not a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a particular taxation year is deemed to be a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout that particular taxation year if

(*a*) a person or partnership has, in that particular taxation year, acquired or disposed of shares of the capital stock of that non-resident corporation or of any other corporation and, because of that acquisition or disposition, that non-resident corporation becomes or ceases to be a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest, and

(*b*) at the beginning of that particular taxation year or at the end of that particular taxation year, the non-resident corporation is a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest.

Rule re subsection (2.2)

(2.21) Subsection (2.2) does not apply for the purpose of paragraph (2)(*a*) in respect of any income or loss referred to in that paragraph, of a particular foreign affiliate of the taxpayer, to the extent that that income or loss can reasonably be considered to have been realized or to have accrued before the earlier of

(*a*) the time at which the particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, and

(*b*) the time at which the particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of another person resident in Canada in respect of which the other person resident in Canada had a qualifying interest, where

(i) the taxpayer is a corporation,

(ii) the taxpayer did not exist at the beginning of the taxation year,

(iii) the particular affiliate became a foreign affiliate of the taxpayer in the taxation year because of a disposition, in the taxation year, of shares of the capital stock of the particular affiliate to the taxpayer by the other person resident in Canada, and

(iv) the other person resident in Canada was, immediately before that disposition, related to the taxpayer.

(21) Paragraph 95(2.3)(*b*) of the Act is replaced by the following:

(*b*) the sale or exchange was made by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length, if

(i) the business is principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) the affiliate is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities and the activities of the business are regulated

(A) under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and under the laws of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(B) under the laws of the country (other than Canada) in which the business is principally carried on, or

(C) if the affiliate is related to a corporation, under the laws of the country under the laws of which that related corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union; and

(22) Paragraph 95(2.4)(*a*) of the Act is replaced by the following:

(*a*) the income is derived by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(i) of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(ii) of the country in which the business is principally carried on, or

(iii) if the affiliate is related to a corporation, of the country under the laws of which that related corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(23) Section 95 of the Act is amended by adding the following after subsection (2.4):

Application of paragraph (2)(*a.3*)

(2.41) Paragraph (2)(*a.3*) does not apply to a foreign affiliate of a taxpayer resident in Canada in respect of the foreign affiliate's income for a taxation year derived, directly or indirectly, from indebtedness of persons resident in Canada or from indebtedness in respect of businesses carried on in Canada (referred to in this subsection as the "Canadian indebtedness") if

(*a*) the taxpayer is, at the end of the foreign affiliate's taxation year

(i) a life insurance corporation resident in Canada, the business activities of which are subject by law to the supervision of the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a corporation resident in Canada that is a subsidiary controlled corporation of a corporation described in subparagraph (i);

(*b*) the Canadian indebtedness is used or held by the foreign affiliate, throughout the period in the taxation year that that Canadian indebtedness was used or held by the foreign affiliate, in the course of carrying on a business (referred to in this subsection as the "foreign life insurance business") that is a life insurance business carried on outside Canada (other than a business deemed by paragraph (2)(*a.2*) to be a separate business other than an active business), the activities of which are regulated

(i) under the laws of the country under whose laws the foreign affiliate is governed and any of exists, was (unless the foreign affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(ii) under the laws of the country, if any, in which the business is principally carried on;

(*c*) more than 90% of the gross premium revenue of the foreign affiliate for the taxation year in respect of the foreign life insurance business was derived from the insurance or reinsurance of risks (net of reinsurance ceded) in respect of persons

(i) that were non-resident at the time at which the policies in respect of those risks were issued or effected, and

(ii) that were at that time dealing at arm's length with the foreign affiliate, the taxpayer and all persons that were related at that time to the foreign affiliate or the taxpayer; and

(*d*) it is reasonable to conclude that the foreign affiliate used or held the Canadian indebtedness

(i) to fund a liability or reserve of the foreign life insurance business, or

(ii) as capital that can reasonably be considered to have been required for the foreign life insurance business.

Exception re paragraph (2)(*a.3*)

(2.42) If, at any time in a taxation year of a foreign affiliate of a taxpayer referred to in paragraph (2)(*a.3*), a life insurance corporation resident in Canada is the taxpayer referred to in paragraph (2)(*a.3*) or is a person who controls, or is controlled by, such a taxpayer, a particular indebtedness or a particular lease obligation of the life insurance corporation is, for the purposes of that paragraph, deemed, at that time, not to be an indebtedness or a lease obligation of a person resident in Canada, to the extent of the portion of the particular indebtedness or lease obligation that can reasonably be considered to have been issued by the life insurance corporation to the foreign affiliate

(*a*) in respect of the life insurance corporation's life insurance business carried on outside Canada; and

(*b*) not in respect of

(i) the life insurance corporation's life insurance business carried on in Canada, or

(ii) any other use.

(24) The definition "indebtedness" in subsection 95(2.5) of the Act is replaced by the following:

"indebtedness"
« dette »

"indebtedness" does not include obligations of a particular person under agreements with non-resident corporations providing for the purchase, sale or exchange of currency where

(*a*) the agreements are swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements, or similar agreements,

(*b*) the particular person is a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(*c*) the agreements are entered into by the non-resident corporation in the course of a business conducted principally with persons with whom the non-resident corporation deals at arm's length, if

(i) the business is principally carried on in the country (other than Canada) under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) the non-resident corporation is a foreign affiliate of the particular person, or of a person related to the particular person, and

(A) the non-resident corporation is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, and

(B) the activities of the business are regulated

(I) under the laws of the country under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(II) under the laws of the country (other than Canada) in which the business is principally carried, or

(III) if the affiliate is related to a corporation, under the laws of the country under the laws of which a corporation related to the non-resident corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(*d*) the terms and conditions of such agreements are substantially the same as the terms and conditions of similar agreements made by persons dealings at arm's length;

(25) Section 95 of the Act is amended by adding the following after subsection (2.5):

Rule for the definition "relevant non-arm's length entity"

(2.6) For the purpose of the definition "relevant non-arm's length entity" in subsection (1), in determining whether, at a particular time, an entity was not, at a time (referred to in this subsection as the "prior time") before the particular time and at which the entity did not exist, dealing at arm's length with another entity,

(*a*) where a corporation that exists at the particular time did not exist at the prior time,

(i) the corporation is deemed to exist at the prior time,

(ii) the shares of the capital stock of the corporation that are issued and outstanding at the particular time are deemed to exist at the prior time,

(iii) the owners of the shares of the capital stock of the corporation at the particular time are deemed to own, at the prior time, the shares of the capital stock of the corporation that they own at the particular time, and

(iv) where the corporation is related to another entity at the particular time, the corporation is deemed to be related to that other entity at the prior time;

(*b*) where a partnership that exists at the particular time did not exist at the prior time,

(i) the partnership is deemed to exist at the prior time,

(ii) the partnership interests in the partnership that exist at the particular time are deemed to exist at the prior time, and

(iii) the owners of the partnership interests in the partnership at the particular time are deemed to own, at the prior time, the partnership interests in the partnership that they own at the particular time;

(*c*) where a trust that exists at the particular time did not exist at the prior time,

(i) the trust is deemed to exist at the prior time,

(ii) the beneficiaries and their beneficial interests in the trust that exist at the particular time are deemed to exist at the prior time, and

(iii) where the trust is related to another entity at the particular time, the trust is deemed to be related to that other entity at the prior time; and

(*d*) where a natural person who exists at the particular time did not exist at the prior time,

(i) the natural person is deemed to exist at the prior time, and

(ii) where the natural person is related to another entity at the particular time, the natural person is deemed to be related to that other entity at the prior time.

(26) Subsection 95(3) of the Act is amended by striking out the word "or" at the end of paragraph (*a*) and by adding the following after paragraph (*b*):

(*c*) the transmission of electronic signals or electricity along a transmission system located outside Canada; or

(*d*) the manufacturing or processing outside Canada, in accordance with the taxpayer's specifications and under a contract between the taxpayer and the affiliate, of tangible property, or for civil law corporeal property, that is owned by the taxpayer if the property resulting from the manufacturing or processing is used or held by the taxpayer in the ordinary course of the taxpayer's business carried on in Canada.

(27) Section 95 of the Act is amended by adding the following after subsection (3):

Designated property — subparagraph (2)(*a.1*)(i)

(3.1) Designated property referred to in subparagraph (2)(*a.1*)(i) is property that is described in the portion of paragraph (2)(*a.1*) that is before subparagraph (i) that is

(*a*) property that was sold to non-resident persons other than the affiliate, or sold to the affiliate for sale to non-resident persons, and

(i) that

(A) was — in the course of carrying on a business in Canada — manufactured, produced, grown, extracted or processed in Canada by the taxpayer, or by a person with whom the taxpayer does not deal at arm's length, or

(B) was — in the course of a business carried on by a foreign affiliate of the taxpayer outside Canada — manufactured or processed from tangible property, or for civil law corporeal property, that, at the time of the manufacturing or processing, was owned by the taxpayer or by a person related to the taxpayer and used or held by the owner in the course of carrying on a business in Canada, if the manufacturing or processing was in accordance with the specifications of the owner of that tangible or corporeal property and under a contract between that owner and that foreign affiliate,

(ii) that was acquired, in the course of carrying on a business in Canada, by a purchaser from a vendor, if

(A) the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length, and

(B) the vendor is a person

(I) with whom the taxpayer deals at arm's length,

(II) who is not a foreign affiliate of the taxpayer, and

(III) who is not a foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length, or

(iii) that was acquired by a purchaser from a vendor, if

(A) the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length,

(B) the vendor is a foreign affiliate of

(I) the taxpayer, or

(II) a person resident in Canada with whom the taxpayer does not deal at arm's length, and

(C) that property was manufactured, produced, grown, extracted or processed in the country

(I) under whose laws the vendor is governed and any of exists, was (unless the vendor was continued in any jurisdiction) formed or organized, or was last continued, and

(II) in which the vendor's business is principally carried on; or

(*b*) property that is an interest in real property, or a real right in an immoveable, located in, or a foreign resource property in respect of, the country

(i) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(ii) in which the affiliate's business is principally carried on.

(28) The definitions "active business", "income from an active business" and "income from property" in subsection 95(1) of the Act, as enacted by subsection (1), subsections (3), (4), and (6), the definitions "income from a non-qualifying business", "non-qualifying business" and "non-qualifying country" in subsection 95(1) of the Act, as enacted by subsection (9), and paragraphs 95(2)(*w*) and (*x*) of the Act, as enacted by subsection (17), apply in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

(29) The definition "controlled foreign affiliate" in subsection 95(1) of the Act, as enacted by subsection (1), applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1995, except that

(*a*) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004, the definition "controlled foreign affiliate" in subsection 95(1) of the Act, as enacted by subsection (1), is to be read as follows:

"controlled foreign affiliate" *« société étrangère affiliée contrôlée »*

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada, means

(*a*) a foreign affiliate of the taxpayer that is, at that time, controlled

(i) by the taxpayer,

(ii) by the taxpayer and not more than four other persons resident in Canada, or

(iii) by not more than four persons resident in Canada, other than the taxpayer,

(*b*) a foreign affiliate of the taxpayer that would, at that time, be controlled by the taxpayer if the taxpayer owned

(i) all of the shares of the capital stock of the foreign affiliate that are owned at that time by the taxpayer,

(ii) all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with the taxpayer,

(iii) all of the shares of the capital stock of the foreign affiliate that are owned at that time by the persons (each of whom is referred to in this definition as a "relevant Canadian shareholder"), in any set of persons not exceeding four (which set of persons shall be determined without reference to the existence of or the absence of any relationship, connection or action in concert between those persons), who

(A) are resident in Canada,

(B) are not the taxpayer or a person described in subparagraph (ii), and

(C) own, at that time, shares of the capital stock of the foreign affiliate, and

(iv) all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with any relevant Canadian shareholder, or

(*c*) a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(*h*);

(*b*) for taxation years, of a foreign affiliate of a taxpayer, that begin after 1995 and before 2003, the definition "controlled foreign affiliate" in subsection 95(1) of the Act, as enacted by subsection (1), is to be read as follows:

"controlled foreign affiliate"
« société étrangère affiliée contrôlée »

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(*a*) is, at that time, controlled

(i) by the taxpayer,

(ii) by the taxpayer and not more than four other persons resident in Canada, or

(iii) by not more than four persons resident in Canada, other than the taxpayer, or

(*b*) would, at that time, be controlled by the taxpayer if the taxpayer owned

(i) each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any of not more than four other persons resident in Canada,

(ii) each share of the capital stock of a corporation that is owned at that time by any of not more than four persons resident in Canada (other than the taxpayer), and

(iii) each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any person with whom the taxpayer does not deal at arm's length.

(30) Subject to subsection (50), subsections (2) and (15) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(31) Subsection (5) applies in respect of taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

(32) Subject to subsection (50), subsections (7), (16), (19) and (21) to (24) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

(33) Subject to subsection (50), subsection (8) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

(34) Subject to subsection (49), subsection (11) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(35) The definitions "calculating currency", "calculating currency exchange rate", "Canadian currency exchange rate", "designated acquired corporation", "designated taxable Canadian property", "entity", "relevant non-arm's length entity"and "transitional exchange rate"in subsection 95(1) of the Act, as enacted by subsection (9), and subsection (25) apply in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 1994, except that, in so applying paragraph (*b*) of the definition "designated taxable Canadian property" in subsection 95(1) of the Act, as enacted by subsection (9), for the 1997 and preceding taxation years of foreign affiliates of a taxpayer, that paragraph is to be read as follows:

(*b*) not be exempt — because of a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of another country, which has the force of law in Canada at that time — from tax under this Part;

(36) The definitions "eligible trust", "exempt trust", "specified fixed interest" and "specified purchaser" in subsection 95(1) of the Act, as enacted by subsection (9), apply after February 27, 2004, except that, after February 27, 2004 and before ANNOUNCEMENT DATE, the definition "specified purchaser" in subsection 95(1) of the Act, as enacted by subsection (9), shall be read as follows:

"specified purchaser" *« acheteur déterminé »*

"specified purchaser", at any time in respect of a particular taxpayer resident in Canada, means a person or partnership that is, at that time,

(*a*) the particular taxpayer;

(*b*) a taxpayer resident in Canada with which the particular taxpayer does not deal at arm's length;

(*c*) a foreign affiliate of a person described in paragraph (*a*) or (*b*);

(*d*) a non-resident person with which a person described in any of paragraphs (*a*) to (*c*) does not deal at arm's length;

(*e*) a trust (other than an exempt trust) in which a person or partnership described in any of paragraphs (*a*) to (*d*) and (*f*) is beneficially interested; and

(*f*) a partnership of which a person or partnership described in any of paragraphs (*a*) to (*e*) is a member.

(37) The definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (9), applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(38) Subject to subsection (50), subsection (10) and paragraph 95(2)(*z*) of the Act, as enacted by subsection (17), apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However,

(*a*) subject to paragraph (*b*), paragraph 95(2)(*a*) of the Act, as enacted by subsection (10), shall, for taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009, be read as follows:

(*a*) in computing the income or loss from an active business for a taxation year of a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or that is a controlled foreign affiliate of the taxpayer throughout the year, there shall be included any income or loss of the particular foreign affiliate for that year from sources in a country other than Canada that would otherwise be income or loss from property of the particular foreign affiliate for the year to the extent that

(i) the income or loss

(A) is derived by the particular foreign affiliate from activities that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by

(I) another corporation

1. that is a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

2. that is a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a life insurance corporation that is resident in Canada throughout the year and that is

1. the taxpayer,

2. a person who controls the taxpayer,

3. a person controlled by the taxpayer, or

4. a person controlled by a person who controls the taxpayer, and

(B) would be included in computing the amount prescribed to be the earnings or loss, from an active business carried on in a country other than Canada, of

(I) the non-resident corporation referred to in sub-subclause (A)(I)1 or the life insurance corporation referred to in subclause (A)(II), if that non-resident corporation or that life insurance corporation were a foreign affiliate of the taxpayer and the income were earned by it, or

(II) the foreign affiliate referred to in sub-subclause (A)(I)2, if the income were earned by it,

(ii) the income or loss is derived from amounts that were paid or payable, directly or indirectly, to the particular foreign affiliate or a partnership of which the particular foreign affiliate was a member

(A) by

(I) a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

(II) a partnership of which a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that non-resident corporation was a member of the partnership

to the extent that those amounts that were paid or payable are for expenditures that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible by it in computing the amounts prescribed to be its earnings or loss for a taxation year from an active business (other than an active business carried on in Canada),

(B) by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a partnership of which another foreign affiliate of the taxpayer — in respect of which other foreign affiliate the taxpayer has a qualifying interest throughout the year or to which other foreign affiliate the particular foreign affiliate and the taxpayer are related throughout the year — is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that other foreign affiliate was a member of the partnership

to the extent that those amounts that were paid or payable are for expenditures that were deductible by the other foreign affiliate or would (if the partnership were a foreign affiliate of the taxpayer) be deductible by the partnership in computing the amounts prescribed to be its earnings or loss for a taxation year from an active business (other than an active business carried on in Canada),

(C) by a partnership of which the particular foreign affiliate is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which the particular foreign affiliate was a member of the partnership, to the extent that those amounts that were paid or payable were for expenditures that would, if the partnership were a foreign affiliate of the taxpayer, be deductible in computing the amounts prescribed to be its earnings or loss for a taxation year from an active business (other than an active business carried on in Canada),

(D) by another foreign affiliate (referred to in this clause as the "second affiliate") of the taxpayer — in respect of which the taxpayer has a qualifying interest throughout the year or to which the particular foreign affiliate and the taxpayer are related throughout the year — to the extent that the amounts are paid or payable by the second affiliate, in respect of any particular period in the year,

(I) under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or

(II) on an amount payable for property acquired for the purpose of gaining or producing income from property

where

(III) the property is, throughout the particular period, excluded property of the second affiliate that is shares of the capital stock of a corporation (referred to in this clause as the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest or to which the particular foreign affiliate and the taxpayer are related,

(IV) the second affiliate and the third affiliate are resident in the same country for each of their taxation years (each of which taxation years is referred to in subclause (V) as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year, and

(V) in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

1. that affiliate is subject to income taxation in that country in that relevant taxation year, or

2. the members or shareholders of that affiliate (which, for the purpose of this sub-subclause, includes a person that has, directly or indirectly, an interest in a share of the capital stock of, or in an equity interest in, the affiliate) at the end of that relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends, or

(E) by a life insurance corporation that is resident in Canada and that is the taxpayer, a person who controls the taxpayer, a person controlled by the taxpayer or a person controlled by a person who controls the taxpayer, to the extent that those amounts that were paid or payable were for expenditures that are deductible by the life insurance corporation in computing its income or loss for a taxation year from carrying on its life insurance business outside Canada and are not deductible in computing its income or loss for a taxation year from carrying on its life insurance business in Canada,

(iii) the income or loss is derived by the particular foreign affiliate from the factoring of trade accounts receivable acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the accounts receivable arose in the course of an active business carried on in a country other than Canada by the non-resident corporation,

(iv) the income or loss is derived by the particular foreign affiliate from loans or lending assets acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the loans or lending assets arose in the course of an active business carried on in a country other than Canada by the non-resident corporation,

(v) the income or loss is derived by the particular foreign affiliate from the disposition of excluded property that is not capital property, or

(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce

(A) its risk — with respect to an amount that increases the amount required by this paragraph to be included in computing the particular foreign affiliate's income for a taxation year from an active business or that decreases the amount required by this paragraph to be included in computing the particular foreign affiliate's loss for a taxation year from an active business — of fluctuations in the value of the currency in which the amount was denominated, or

(B) its risk — with respect to an amount that decreases the amount required by this paragraph to be included in computing the particular foreign affiliate's income for a taxation year from an active business or that increases the amount required by this paragraph to be included in computing the particular foreign affiliate's loss for a taxation year from an active business — of fluctuations in the value of the currency in which the amount was denominated;

(*b*) if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to,

(i) subclauses 95(2)(*a*)(ii)(D)(III) to (V) of the Act, as enacted by subsection (10), as required to be read by paragraph (*a*), also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000, except that the references in those subclauses, as those subclauses apply to those taxation years

of a foreign affiliate of a taxpayer, to "particular foreign affiliate" shall be read as references to "particular affiliate"; and

(ii) where the taxpayer has not validly made the election provided by subsection (50), clauses 95(2)(*a*)(ii)(A) to (C) and (E) of the Act, as enacted by subsection (10), as required to be read by paragraph (*a*), also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000, except that the references in those clauses 95(2)(*a*)(ii)(A) to (C), as those clauses apply to those taxation years of a foreign affiliate of a taxpayer, to "particular foreign affiliate" shall be read as references to "particular affiliate" and

(A) subclause (II) of that clause 95(2)(*a*)(ii)(A) shall be read as follows:

(II) a partnership of which a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year is a member and of which that non-resident corporation is not a specified member at any time in a fiscal period of the partnership that ends in the year

(B) subclause (II) of that clause 95(2)(*a*)(ii)(B) shall be read as follows:

(II) a partnership of which another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year is a member and of which that other foreign affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year

(C) that clause 95(2)(*a*)(ii)(C) shall be read as follows:

(C) by a partnership of which the particular affiliate is a member and of which the particular affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year, to the extent that those amounts that were paid or payable were for expenditures that would be, if the partnership were a foreign affiliate of the taxpayer, deductible in a taxation year in computing the amounts prescribed to its earnings or loss from an active business carried on by it outside Canada,

(39) Subsection (12) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, in applying paragraph 95(2)(*b*) of the Act, as enacted by subsection (12), to taxation years, of a foreign affiliate of the taxpayer, that begin after December 20, 2002 and before February 28, 2004, that paragraph shall be read as follows:

(*b*) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if

(i) the amount paid or payable in consideration for those services or for the undertaking to provide those services

(A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a controlled foreign affiliate of

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(ii) the services are, or are to be, performed by

(A) any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada, or

(B) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada;

(40) Subsection (13) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that

(*a*) for taxation years, of foreign affiliates of a taxpayer, that begin before 2009, the portion of paragraph 95(2)(*f.1*) of the Act, before subparagraph (i) of that paragraph, as enacted by subsection (13), shall be read as follows:

(*f.1*) the income or loss of a foreign affiliate of a taxpayer from property or the income or loss of a foreign affiliate of a taxpayer from a business other than an active business, for a taxation year is to be computed in respect of the taxpayer in accordance with this Act as if

(*b*) paragraph 95(2)(*f.2*) of the Act, as enacted by subsection (13), shall, applicable in respect of any disposition made before March 19, 2007 and in a taxation year, of a foreign affiliate of the taxpayer, that begins after December 20, 2002, be read as though it contained a subparagraph (viii.1) that reads as follows:

(viii.1) notwithstanding subparagraph (i), each capital gain or capital loss, taxable capital gain or allowable capital loss for a taxation year from the disposition, at any time, of an excluded property that is required to be included in computing the foreign affiliate's foreign accrual property income, in Canadian currency,

(*c*) if the taxpayer elects in writing in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, paragraph 95(2)(*f*) of the Act, as enacted by subsection (13), and paragraphs 95(2)(*f.1*) and (*f.2*) of the Act, as enacted by subsection (13), those paragraphs 95(2)(*f.1*) and (*f.2*) of the Act being read in the manner described by paragraphs (*a*) and (*b*), respectively, also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and before December 21, 2002.

(41) Subject to subsection (50), paragraphs 95(2)(*g*) to (*g.03*) of the Act, as enacted by subsection (14), apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, for taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 and before 2009, paragraph 95(2)(*g*) of the Act, as enacted by subsection (14), shall be read as follows:

(*g*) income earned, a loss incurred or a capital gain or capital loss realized, as the case may be, in a taxation year by a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year or that is a controlled foreign affiliate of the taxpayer throughout the taxation year, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, is deemed to be nil if it is earned, incurred or realized in reference to any of the following sources:

(i) a debt obligation that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (which other foreign affiliate or other non-resident corporation is referred to in this paragraph as a "qualified foreign corporation"), or

(B) the particular affiliate by a qualified foreign corporation,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or a qualified foreign corporation (which particular affiliate or which qualified foreign affiliate is referred to in this subparagraph as the "issuing corporation") by the issuing corporation, or

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another qualified foreign corporation;

(42) Subject to subsection (50), paragraphs 95(2)(*n*) and (*p*), (*r*) to (*t*), (*v*) and (*y*) of the Act, as enacted by subsection (17), apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, paragraph 95(2)(*n*) of the Act, as enacted by subsection (17), applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(43) Subject to subsection (50), paragraphs 95(2)(*o*) and (*q*) of the Act, as enacted by subsection (17), apply to taxation years that end after 1999.

(44) Paragraph 95(2)(*u*) of the Act, as enacted by subsection (17), applies in respect of taxation years, of foreign affiliates of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, paragraph 95(2)(*u*) of the Act, as enacted by

subsection (17), applies in respect of taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(45) Subsection (18) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

(46) Subsection 95(2.2) of the Act, as enacted by subsection (20), applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However,

(*a*) subsection 95(2.2) of the Act, as enacted by subsection (20), shall be read as follows for taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009:

Rule for subsection (2)

(2.2) For the purpose of subsection (2), other than paragraphs (2)(*f*) and (*f*.1),

(*a*) a non-resident corporation that was not a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a particular taxation year shall be deemed to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest throughout that year where

(i) a person or partnership has, in that year, acquired or disposed of shares of the capital stock of that non-resident corporation or any other corporation and, because of that acquisition or disposition, that non-resident corporation became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, and

(ii) at the beginning of that year or at the end of that year, the non-resident corporation was a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest; and

(*b*) a non-resident corporation that was not related to a taxpayer or to a taxpayer and a foreign affiliate of the taxpayer, as the case may be, throughout a particular taxation year is deemed to be related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer throughout that year if

(i) a person or partnership has, in that year, acquired or disposed of shares of the capital stock of the non-resident corporation or any other corporation and, because of that acquisition or disposition, the non-resident corporation became (or would have become, if paragraph 251(5)(*b*) did not apply to rights contained in the agreement under which the person acquired the shares), or ceased to be, a non-resident corporation that was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer, and

(ii) at the beginning, or at the end, of that year, the non-resident corporation was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer.

(*b*) if a taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, subsection 95(2.2) of the Act, as enacted by subsection (20), also applies to taxation years, of all its foreign affiliates,

that begin after 1994 and end before 2000, as though subsection 95(2.2) of the Act, as enacted by subsection (20), read as follows:

Rule for subsection (2)

(2.2) For the purpose of subsection (2), other than paragraphs (2)(*f*) and (*f*.1),

(*a*) a non-resident corporation that was not a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a particular taxation year shall be deemed to be a foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout that year where

(i) a person has, in that year, acquired or disposed of shares of the capital stock of that non-resident corporation or any other corporation and, because of that acquisition or disposition, that non-resident corporation became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, and

(ii) at the beginning of that year or at the end of that year, the non-resident corporation was a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest; and

(*b*) a non-resident corporation that was not related to a taxpayer or to a taxpayer and a foreign affiliate of the taxpayer, as the case may be, throughout a particular taxation year is deemed to be related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer throughout that year if

(i) a person has, in that year, acquired or disposed of shares of the capital stock of the non-resident corporation or any other corporation and, because of that acquisition or disposition, the non-resident corporation became (or would have become, if paragraph 251(5)(*b*) did not apply to rights contained in the agreement under which the person acquired the shares), or ceased to be, a non-resident corporation that was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer, and

(ii) at the beginning, or at the end, of that year, the non-resident corporation was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer.

(47) Subsection 95(2.21) of the Act, as enacted by subsection (20), applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However,

(*a*) for taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009, subsection 95(2.21) of the Act, as enacted by subsection (20), is to be read as follows:

Rule re subsection (2.2)

(2.21) Subsection (2.2) does not apply for the purpose of paragraph (2)(*a*) in respect of any income or loss referred to in that paragraph, of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year of the particular affiliate or to which the taxpayer is related throughout the taxation year, to the extent that that income or loss can reasonably be considered to have been realized or to have accrued

(*a*) before the earlier of

(i) the time at which the particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest or to which the taxpayer is related, and

(ii) the time at which the particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of another person resident in Canada in respect of which the other person resident in Canada had a qualifying interest or to which the other person resident in Canada is related, where

(A) the taxpayer is a corporation,

(B) the taxpayer did not exist at the beginning of the taxation year,

(C) the particular affiliate became a foreign affiliate of the taxpayer in the taxation year because of a disposition, in the taxation year, of shares of the capital stock of the particular affiliate to the taxpayer by the other person resident in Canada, and

(D) the other person resident in Canada was, immediately before that disposition, related to the taxpayer; or

(*b*) before the earlier of

(i) the time at which a non-resident corporation (other than the particular affiliate), or a foreign affiliate of the taxpayer (other than the particular affiliate), referred to in paragraph (2.2)(*a*) became, as determined without reference to subsection (2.2),

(A) a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, or

(B) related to the taxpayer and to the particular affiliate, and

(ii) the time at which a non-resident corporation (other than the particular affiliate), or a foreign affiliate of the taxpayer (other than the particular affiliate), referred to in paragraph (2.2)(*a*) became, as determined without reference to subsection (2.2), a foreign affiliate, of another person resident in Canada, in respect of which the other person resident in Canada had a qualifying interest (or became, as determined without reference to subsection (2.2), related to the other person resident in Canada and to the particular affiliate), where

(A) the taxpayer is a corporation,

(B) the taxpayer did not exist at the beginning of the taxation year,

(C) the particular affiliate became a foreign affiliate of the taxpayer in the taxation year because of a disposition, in the taxation year, of shares of the capital stock of the particular affiliate to the taxpayer by the other person resident in Canada, and

(D) the other person resident in Canada was, immediately before that disposition, related to the taxpayer.

(*b*) if a taxpayer makes a valid election under paragraph (46)(*b*) in respect of all its foreign affiliates, subsection 95(2.21) of the Act, as enacted by subsection (20), being

read in the manner described in paragraph (*a*), also applies to taxation years, of all its foreign affiliates, that begin after 1994 and end before 2000.

(48) Subject to subsection (50), subsection (26) applies to the 2001 and subsequent taxation years of a foreign affiliate of a taxpayer. However, if a taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, that subsection applies to taxation years, of all its foreign affiliates, that begin after 1994.

(49) Subsection (27) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, subsections (11) and (27) apply to taxation years, of all its foreign affiliates, that begin after 1994.

(50) If a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to,

(*a*) paragraphs (*a*), (*c*) and (*c*.1) of the definition "excluded property" in subsection 95(1) of the Act, as enacted by subsection (2), subsection (8), paragraphs 95(2)(*g.01*) and (*g.02*) of the Act, as enacted by subsection (14), paragraph 95(2)(*i*) of the Act, as enacted by subsection (15), paragraphs 95(2)(*o*) to (*t*) and (*z*) of the Act, as enacted by subsection (17), subsections (19) and (23) and paragraph 95(3)(*d*) of the Act, as enacted by subsection (25), apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994;

(*b*) subparagraph 95(2)(*a*)(i) of the Act, as enacted by subsection (10), read in the manner described in paragraph (38)(*a*) but read without reference to sub-subclause 95(2)(*a*)(i)(A)(I)2 of the Act, subclause 95(2)(*a*)(i)(B)(II) of the Act and the word "or" at the end of subclause 95(2)(*a*)(i)(B)(I) of the Act, also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000;

(*c*) clauses 95(2)(*a*)(ii)(A) to (C) and (E) of the Act and subparagraphs 95(2)(*a*)(v) and (vi) of the Act, all as enacted by subsection (10), read in the manner described in paragraph (38)(*a*), also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000, except that the references to "income or loss" in that subparagraph 95(2)(*a*)(v) and that portion of subparagraph 95(2)(*a*)(vi) before clause (A) of that subparagraph 95(2)(*a*)(vi), as those subparagraphs apply to those taxation years of a foreign affiliate of the taxpayer, shall be replaced by a reference to "income"; and

(*d*) paragraph 95(2)(*g*) of the Act, as enacted by subsection (14), being read in the manner described in subsection (41), also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and before December 21, 2002.

(51) If a taxpayer has made what would, but for this subsection, be a valid election under subsection (50) and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which this Act is assented to, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this subsection, never to have been made.

(52) Notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election referred to in any of subsections (38), (40), (42), (44), (46) and (48) to (50), or a revocation referred to in subsection (51), into account.

17. (1) Section 104 of the Act is amended by adding the following after subsection (21.2):

Beneficiaries' taxable capital gain — QFP taxable capital gain

(21.21) If clause (21.2)(*b*)(ii)(A) applies to deem, for the purpose of section 110.6, the beneficiary to have a taxable capital gain (referred to in this subsection as the "QFP taxable capital gain") from a disposition of capital property that is qualified farm property of the beneficiary, for the beneficiary's taxation year that includes March 19, 2007 and in which the designation year of the trust ends, for the purpose of subsection 110.6(2.3), the beneficiary is, where the trust complies with the requirements of subsection (21.24), deemed to have a taxable capital gain from the disposition of qualified farm property of the beneficiary on or after March 19, 2007 equal to the amount determined by the formula

$$A \times B / C$$

where

A is the amount of the QFP taxable capital gain;

B is, where the designation year of the trust includes March 19, 2007, the amount that would be determined in respect of the trust for the designation year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(*b*) were qualified farm property of the trust that were disposed of by the trust on or after March 19, 2007; and

C is, where the designation year of the trust includes March 19, 2007, the amount that would be determined in respect of the trust for the designation year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(*b*) were qualified farm property.

Beneficiaries' taxable capital gain — QSBC taxable capital gain

(21.22) If clause (21.2)(*b*)(ii)(B) applies to deem, for the purpose of section 110.6, the beneficiary to have a taxable capital gain (referred to in this subsection as the "QSBC taxable capital gain") from a disposition of capital property that is a qualified small business corporation share of the beneficiary, for the beneficiary's taxation year in which the designation year of the trust ends, for the purpose of subsection 110.6(2.3), the beneficiary, where the trust complies with requirements of subsection (21.24), is deemed to have a taxable capital gain from the disposition of a qualified small business corporation share of the beneficiary on or after March 19, 2007 equal to the amount determined by the formula

$$A \times B / C$$

where

A is the amount of the QSBC taxable capital gain;

B is, where the designation year of the trust includes March 19, 2007, the amount that would be determined in respect of the trust for the designation year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(*b*) were qualified small business corporation shares of the trust that were disposed of by the trust on or after March 19, 2007; and

C is, where the designation year of the trust includes March 19, 2007, the amount that would be determined in respect of the trust for the designation year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(*b*) were qualified small business corporation shares of the trust.

Beneficiaries' taxable capital gain — QFFP taxable capital gain

(21.23) If clause (21.2)(b)(ii)(C) applies to deem, for the purpose of section 110.6, the beneficiary to have a taxable capital gain (referred to in this subsection as the "QFFP taxable capital gain"), from a disposition of capital property that is qualified fishing property of the beneficiary, for the beneficiary's taxation year in which the designation year of the trust ends, for the purpose of subsection 110.6(2.3), the beneficiary, where the trust complies with requirements of subsection (21.24), is deemed to have a taxable capital gain from the disposition of qualified fishing property on or after March 19, 2007 equal to the amount determined by the formula

$$A \times B / C$$

where

A is the amount of the QFFP taxable capital gain;

B is, where the designation year of the trust includes March 19, 2007, the amount that would be determined in respect of the trust for the designation year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(*b*) were qualified fishing property that were disposed of by the trust on or after March 19, 2007; and

C is, where the designation year of the trust includes March 19, 2007, the amount that would be determined in respect of the trust for the designation year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(*b*) were qualified fishing property of the trust.

Trusts to designate amounts

(21.24) A trust shall determine and designate, in its return of income under this part for a designation year of the trust, the following amounts in respect of a beneficiary:

(*a*) the amount that is, under subsection (21.21), determined to be the beneficiary's taxable capital gain from the disposition, on or after March 19, 2007, of qualified farm property of the beneficiary,

(*b*) the amount that is, under subsection (21.22), determined to be the beneficiary's taxable capital gain from the disposition, on or after March 19, 2007, of qualified small business corporation share of the beneficiary, and

(*c*) the amount that is, under subsection (21.23), determined to be the beneficiary's taxable capital gain from the disposition, on or after March 19, 2007, of qualified fishing property of the beneficiary.

(2) Subsection (1) applies to taxation years of trusts that end on or after March 19, 2007.

18. (1) Subparagraph 108(2)(*b*)(vi) of the Act is replaced by the following:

(vi) where the trust would not be a unit trust at the particular time if this paragraph were read without reference to this subparagraph and subparagraph (iii) were read without reference to clause (F), the units of the trust are listed at any time in the current year or in the following taxation year on a designated stock exchange in Canada, or

(2) Subsection (1) applies on and after the day on which this Act is assented to.

19. (1) The portion of paragraph 110(1)(*d.01*) of the Act before subparagraph (i) is replaced by the following:

(*d.01*) subject to subsection (2.1), if the taxpayer disposes of a security acquired in the year by the taxpayer under an agreement referred to in subsection 7(1) by making a gift of the security to a qualified donee (other than a non-qualifying private foundation, as defined in subsection 149.1(1)), an amount in respect of the disposition of the security equal to 1/2 of the lesser of the benefit deemed by paragraph 7(1)(*a*) to have been received by the taxpayer in the year in respect of the acquisition of the security and the amount that would have been that benefit had the value of the security at the time of its acquisition by the taxpayer been equal to the value of the security at the time of the disposition, if

(2) Subsection (1) applies in respect of gifts made on or after March 19, 2007.

20. (1) Subsection 110.1(1) of the Act is amended by striking out the word "and" at the end of paragraph (*c*), by adding the word "and" at the end of paragraph (*d*) and by adding the following after paragraph (*d*):

Gifts of medicine

(*e*) the total of all amounts each of which is an amount, in respect of property that is the subject of an eligible medical gift made by the corporation in the taxation year or in any of the 5 preceding taxation years, determined by the formula

$$A \times B/C$$

where

A is the lesser of

(*a*) the cost to the corporation of the property, and (*b*) 50 per cent of the amount, if any, by which the corporation's proceeds of disposition of the property in respect of the gift exceeds the cost to the corporation of the property;

B is the eligible amount of the gift; and

C is the corporation's proceeds of disposition of the property in respect of the gift.

(2) Section 110.1 of the Act is amended by adding the following after subsection (7):

Eligible medical gift

(8) For the purpose of paragraph (1)(*e*), a gift referred to in paragraph (1)(*a*) is an eligible medical gift of a corporation if

(*a*) the corporation has directed the donee to apply the gift to charitable activities outside of Canada;

(*b*) in the case of a gift made on or before ANNOUNCEMENT DATE, the property that is the subject of the gift is medicine;

(*c*) in the case of a gift made after ANNOUNCEMENT DATE, the property that is the subject of the gift is a medicine that qualifies as a drug, within the meaning of the *Food and Drugs Act*, and the drug

(i) meets the requirements of that Act, or would meet those requirements if that Act were read without reference to its subsection 37(1), and

(ii) is not a food, cosmetic or device (as those terms are defined in that Act), a natural health product (as defined in the *Natural Health Products Regulations*) or a veterinary drug;

(*d*) the property was, immediately before the making of the gift, described in an inventory in respect of a business of the corporation; and

(*e*) the donee is a registered charity that has received a disbursement under a program of the Canadian International Development Agency.

(3) Subsections (1) and (2) apply in respect of gifts of property made after March 18, 2007.

21. (1) The formula in paragraph 110.6(2)(*a*) of the Act is replaced by the following:

$$[\$375{,}000 - (A + B + C + D)] \times E$$

(2) Section 110.6 of the Act is amended by adding the following subsection after subsection (2.2):

Additional capital gains deduction — Taxation year that includes March 19, 2007

(2.3) In computing the taxable income of an individual (other than a trust) for the individual's taxation year that includes March 19, 2007 (referred to in this subsection as the "transition year"), there may be deducted, where that individual was resident in Canada throughout the transition year and that individual disposed of in the transition year, and on or after March 19, 2007, a qualified small business corporation share of the individual, a qualified farm property of the individual, or a qualified fishing property of the individual, such amount as the individual may claim not exceeding the least of (*a*) $125,000,

(*b*) the amount, if any, by which the individual's cumulative gains limit at the end of the transition year exceeds the total of all amounts each of which is an amount deducted by the individual under subsection (2), (2.1), or (2.2) in computing the individual's taxable income for the transition year,

(*c*) the amount, if any, by which the individual's annual gains limit for the transition year exceeds the total of all amounts each of which is an amount deducted by the individual under subsection (2), (2.1), or (2.2) in computing the individual's taxable income for the transition year, and

(*d*) the amount that would be determined in respect of the individual for the transition year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified small business corporation shares of the individual, qualified farm properties of the individual, and qualified fishing properties of the individual, disposed of by the individual on or after March 19, 2007.

(3) The portion of subsection 110.6(5) of the Act before paragraph (*a*) is replaced by the following:

Deemed resident in Canada

(5) For the purposes of subsections (2) to (2.3), an individual is deemed to have been resident in Canada throughout a particular taxation year if

(4) The portion of subsection 110.6(6) of the Act before paragraph (*a*) is replaced by the following:

Failure to report capital gain

(6) Notwithstanding subsections (2) to (2.3), no amount may be deducted under this section in respect of a capital gain of an individual for a particular taxation year in computing the individual's taxable income for the particular taxation year, if

(5) The portion of subsection 110.6(7) of the Act before paragraph (*b*) is replaced by the following:

Deduction not permitted

(7) Notwithstanding subsections (2) to (2.3), no amount may be deducted under this section in computing an individual's taxable income for a taxation year in respect of a capital gain of the individual for the taxation year if the capital gain is from a disposition of property which disposition is part of a series of transactions or events

(*a*) that includes a dividend received by a corporation to which dividend subsection 55(2) does not apply but would apply if this Act were read without reference to paragraph 55(3)(*b*); or

(6) Subsection 110.6(8) of the Act is replaced by the following:

Deduction not permitted

(8) Notwithstanding subsections (2) to (2.3), where an individual has a capital gain for a taxation year from the disposition of a property and it can reasonably be concluded, having regard to all the circumstances, that a significant part of the capital gain is attributable to the fact that dividends were not paid on a share (other than a prescribed share) or that dividends paid on such a share in the taxation year or in any preceding taxation year were less than 90% of the average annual rate of return on that share for that year, no amount in respect of

that capital gain shall be deducted under this section in computing the individual's taxable income for the year.

(7) Section 110.6 of the Act is amended by adding the following after subsection (30):

Conditions for the application of subsection (32)

(31) Subsection (32) applies to an individual for a taxation year that begins after March 19, 2007 if

(*a*) in the taxation year the individual has a taxable capital gain from the disposition, before March 20, 2007, of a qualified small business corporation share of the individual, a qualified farm property of the individual or a qualified fishing property of the individual; and

(*b*) the total of all amounts each of which is an amount of a taxable capital gain of the individual described in paragraph (*a*) exceeds the amount that would be determined under paragraph (2)(*a*) in respect of the individual for the taxation year were the reference to "$375, 000" in that paragraph read as a reference to "$250,000" (the amount of which excess is referred to in subsection (32) as the "denied excess").

Deduction denied

(32) Notwithstanding subsections (2) to (2.3), if this subsection applies to an individual for a taxation year, no amount may be deducted under this section for the taxation year by the individual in respect of the individual's taxable capital gains for the year described in paragraph (31)(*a*) to the extent of the denied excess.

(8) Subsection (1) applies to taxation years that begin after March 19, 2007.

(9) Subsections (2) to (4), (6) and (7) apply to taxation years that end on or after March 19, 2007.

(10) Subsection (5) applies to taxation years that end after May 1, 2006, except that for taxation years that end before March 19, 2007, the portion of subsection 110.6(7) of the Act before paragraph (*a*), as amended by subsection (5), shall be read as follows:

(7) Notwithstanding subsections (2) to (2.2), no amount may be deducted under this section in computing an individual's taxable income for a taxation year in respect of a capital gain of the individual for the taxation year, if the capital gain is from a disposition of property which disposition is part of a series of transactions or events

22. Section 115 of the Act is amended by adding the following after subsection (2.2):

Non-resident persons — 2010 Olympic and Paralympic Winter Games

(2.3) Notwithstanding subsection (1), no amount is to be included in computing the taxable income earned in Canada for any taxation year of a non-resident person, in respect of any amount paid or payable to that person in respect of activities performed in Canada by that person in connection with the 2010 Olympic Winter Games or the 2010 Paralympic Winter Games, after 2009 and before April 2010, if that person is:

(*a*) an employee, an officer or a member of the International Olympic Committee or the International Paralympic Committee, or an individual (other than a trust) who provides services under contract with one or both of those organizations;

(*b*) an athlete who represents a country other than Canada;

(*c*) a member of an officially registered support staff associated with a team from a country other than Canada;

(*d*) a person who serves as a games official; or

(*e*) an accredited foreign media organization, an employee of such an organization or an individual (other than a trust) who provides services under contract with such an organization.

23. (1) Paragraph 116(6)(*b*) of the Act is amended by replacing the reference to "prescribed stock exchange" in that paragraph with a reference to "recognized stock exchange".

(2) Subsection (1) applies on and after the day on which this Act is assented to.

24. (1) Section 117 of the Act is amended by adding the following after subsection 117(2):

Tax payable — WITB advance payment

(2.1) The tax payable under this Part on the individual's taxable income for a taxation year, as computed under subsection (2), is deemed to be the total of the amount otherwise computed under that subsection and, except for the purposes of sections 118 to 118.9, 120.2, 121, 122.3 and subdivision c, the total of all amounts received by the individual in respect of the taxation year under subsection 122.7(7).

(2) Subsection (1) applies to the 2008 and subsequent taxation years.

25. (1) The portion of subsection 117.1(1) of the Act before paragraph (*a*) is replaced by the following:

Annual adjustment

(1) The amount of $1,000 referred to in the formula in paragraph 8(1)(*s*), each of the amounts expressed in dollars in subparagraph 6(1)(*b*)(v.1), subsection 117(2), the description of B in subsection 118(1), subsection 118(2), paragraph (*a*) of the description of B in subsection 118(10), subsection 118.01(2), the descriptions of C and F in subsection 118.2(1), subsections 118.3(1), 122.5(3) and 122.51(1) and (2), the amounts of $500 and $1,000 referred to in the description of A, and the amounts of $9,500 and $14,500 referred to in the description of B, in the formula in subsection 122.7(2), the amount of $250 referred to in the description of C, and the amounts of $12,833 and $21,167 referred to in the description of D, in the formula in subsection 122.7(3), and each of the amounts expressed in dollars in Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

(2) Subsection (1) applies to the 2008 and subsequent taxation years.

26. (1) Section 118 of the Act is amended by adding the following after subsection (5):

Where subsection 118(5) does not apply

(5.1) Where, if this Act were read without reference to this subsection, solely because of the application of subsection (5), no individual is entitled to a deduction under paragraph (*b*) or (*b.1*) of the description of B in subsection (1) for a taxation year in respect of a child, subsection (5) shall not apply in respect of that child for that taxation year.

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

27. (1) Paragraph (*b*) of the definition "eligible public transit pass" in subsection 118.02(1) of the Act is replaced by the following:

(*b*) identifying the right of an individual who is the holder or owner of the document to use public commuter transit services of that qualified Canadian transit organization

(i) on an unlimited number of occasions and on any day on which the public commuter transit services are offered during an uninterrupted period of at least 28 days, or

(ii) on an unlimited number of occasions during an uninterrupted period of at least 5 consecutive days, if the combination of that document and one or more other such documents gives the right to the individual to use those public commuter transit services on at least 20 days in a 28-day period.

(2) Subsection 118.02(1) of the Act is amended by adding the following in alphabetical order:

"eligible electronic payment card" « *carte de paiement électronique admissible* »

"eligible electronic payment card" means an electronic payment card that is

(*a*) used by an individual for at least 32 one-way trips, between the place of origin of the trip and its termination, during an uninterrupted period not exceeding 31 days, and

(*b*) issued by or on behalf of a qualified Canadian transit organization, which organization records and receipts the cost and usage of the electronic payment card and identifies the right, of the individual who is the holder or owner of such a card, to use public commuter transit services of that qualified Canadian transit organization.

(3) The description of C in the formula in subsection 118.02(2) of the Act is replaced by the following:

C is the total of all amounts each of which is the portion of the cost of an eligible public transit pass or of an eligible electronic payment card, attributable to the use of public commuter transit services in the taxation year by the individual or by a person who is in the taxation year a qualifying relation of the individual, and

(4) Subsection 118.02(3) of the Act is replaced by the following:

Apportionment of credit

(3) If more than one individual is entitled to a deduction under this section for a taxation year in respect of an eligible public transit pass or of an eligible electronic payment card, the total of all amounts so deductible shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that eligible public transit pass or eligible electronic payment card if that individual were the only individual entitled to deduct an amount for the year under this section, and if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

(4) Subsections (1) to (4) apply to the 2007 and subsequent taxation years.

28. (1) The definition "qualifying child" in subsection 118.03(1) of the Act is replaced by the following:

"qualifying child"
« *enfant admissible* »

"qualifying child" of an individual for a taxation year means a child of the individual who is, at the beginning of the taxation year,

(*a*) under 16 years of age; or

(*b*) in the case where an amount is deductible under section 118.3 in computing any person's tax payable under Part I of the Act for the taxation year in respect of that child, under 18 years of age.

(2) The definition "qualifying entity"in subsection 118.03(1) of the Act is replaced by the following:

"qualifying entity"
« *entité admissible* »

"qualifying entity" means a person or partnership that offers one or more prescribed programs of physical activity.

(3) The portion before paragraph (*a*) of the definition "eligible fitness expense" in section 118.03 of the Act is replaced by the following:

"eligible fitness expense"
« *dépense admissible pour activités physiques* »

"eligible fitness expense" in respect of a qualifying child of an individual for a taxation year means the amount of a fee paid to a qualifying entity (other than an amount paid to a person that is, at the time the amount is paid, the individual's spouse or common-law partner or another individual who is under 18 years of age) to the extent that the fee is attributable to the cost of registration or membership of the qualifying child in a prescribed program of physical activity and, for the purposes of this section, that cost

(4) Section 118.03 of the Act is amended by adding the following after subsection (2):

Child fitness tax credit — child with disability

(2.1) For the purpose of computing the tax payable under this Part by an individual for a taxation year there may be deducted in respect of a qualifying child of the individual an amount equal to $500 multiplied by the appropriate percentage for the taxation year if

(*a*) the amount referred to in the description of B in subsection (2) is $100 or more; and

(*b*) an amount is deductible in respect of the qualifying child under section 118.3 in computing any person's tax payable under Part I of the Act for the taxation year.

(5) Subsections (1) to (4) apply to the 2007 and subsequent taxation years.

29. (1) Section 118.1 of the Act is amended by adding the following after subsection (14):

Exchange of beneficial interest in trust

(14.1) Where a donee disposes of a beneficial interest in a trust that is a non-qualifying security of an individual in circumstances where paragraph (13)(*c*) would, but for this subsection, apply in respect of the disposition, and in respect of which the donee receives no consideration other than other non-qualifying securities of the individual, for the purpose of subsection (13) the gift referred to in that subsection is to be read as a reference to a gift of those other non-qualifying securities.

(2) Subparagraph 118.1(16)(*c*)(ii) of the Act is replaced by the following:

(ii) the individual or any person or partnership with which the individual does not deal at arm's length uses property of the donee under an agreement that was made or modified after the time that is 60 months before the particular time, and the property was not used in the carrying on of the donee's charitable activities,

(3) Paragraphs 118.1(18)(*b*) and (*c*) of the Act are replaced by the following:

(*b*) a share (other than a share listed on a designated stock exchange) of the capital stock of a corporation with which the individual or the estate or, where the individual is a trust, a person affiliated with the trust, does not deal at arm's length immediately after that time;

(*b.1*) a beneficial interest of the individual or the estate in a trust that

(i) immediately after that time is affiliated with the individual or the estate, or

(ii) holds, immediately after that time, a non-qualifying security of the individual or estate, or held, at or before that time, a share described in paragraph (*b*) that is, after that time, held by the donee; or

(*c*) any other security (other than a security listed on a designated stock exchange) issued by the individual or the estate or by any person or partnership with which the individual or the estate does not deal at arm's length (or, in the case where the person is a trust, with which the individual or estate is affiliated) immediately after that time.

(4) Subsections (1) to (3) apply in respect of gifts made on or after March 19, 2007, except that in applying subsection 118.1(18) of the Act, as amended by subsection (3), before the day on which this Act is assented to, the references to "designated stock exchange" in that subsection 118.1(18) shall be read as references to "prescribed stock exchange".

30. (1) Clause (*a*)(ii)(A) of the definition "tax otherwise payable under this Part" in subsection 120(4) of the Act is replaced by the following:

(A) subsection 117(2.1), section 119, subsection 120.4(2) and sections 126, 127, 127.4 and 127.41, and

(2) Subsection (1) applies to the 2008 and subsequent taxation years.

31. (1) Paragraph (*d*) of the definition "real estate investment trust" in subsection 122.1(1) of the Act is replaced by the following:

(*d*) at no time in the taxation year is the total fair market value of all properties held by the trust, each of which is a real or immovable property situated in Canada, cash, or a property described in paragraph (*a*) of the definition "fully exempt interest" in subsection 212(3), less than 75% of the equity value of the trust at that time.

(2) Subsection (1) applies on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing

amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

32. (1) Part I of the Act is amended by adding the following after section 122.64:

Subdivision a.2

Working Income Tax Benefit

Definitions

122.7 (1) The following definitions apply in this section.

"adjusted net income" « *revenu net rajusté* »

"adjusted net income" of an individual for a taxation year means the amount that would be the individual's income for the taxation year if

(*a*) this Act were read without reference to paragraph 81(1)(*a*) and subsection 81(4);

(*b*) in computing that income, no amounts were included under subsection 56(6), as a beneficiary of a registered disability savings plan or in respect of any gain from a disposition of property to which section 79 applies; and

(*c*) in computing that income, no amount were deductible under paragraph 60(*y*).

"cohabiting spouse or common-law partner" « *conjoint visé* »

"cohabiting spouse or common-law partner" of an individual at any time has the meaning assigned by section 122.6.

"designated educational institution" « *établissement d'enseignement agréé* »

"designated educational institution" has the meaning assigned by subsection 118.6(1).

"eligible dependant" « *personne à charge admissible* »

"eligible dependant" of an individual for a taxation year means a child of the individual who, at the end of the year,

(*a*) resided with the individual;

(*b*) was under the age of 19 years; and

(*c*) was not an eligible individual.

"eligible individual" « *particulier admissible* »

"eligible individual" for a taxation year means an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was, at the end of the taxation year,

(*a*) 19 years of age or older;

(*b*) the cohabiting spouse or common-law partner of another individual; or

(*c*) the parent of a child with whom the individual resides.

"eligible spouse"
« conjoint admissible »

"eligible spouse" of an eligible individual for a taxation year means an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was, at the end of the taxation year, the cohabiting spouse or common-law partner of the eligible individual.

"ineligible individual"
« particulier non admissible »

"ineligible individual" for a taxation year means an individual

(*a*) who is described in paragraph 149(1)(*a*) or (*b*) at any time in the taxation year;

(*b*) who, except where the individual has an eligible dependant for the taxation year, was enrolled as a full-time student at a designated educational institution for a total of more than 13 weeks in the taxation year; or

(*c*) who was confined to a prison or similar institution for a period of at least 90 days during the taxation year.

"return of income"
« déclaration de revenu »

"return of income" filed by an individual for a taxation year means a return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(*e*) or subsection 150(4)) that is required to be filed for the taxation year or that would be required to be filed if the individual had tax payable under this Part for the taxation year.

"working income"
« revenu de travail »

"working income" of an individual for a taxation year means the total of

(*a*) the total of all amounts each of which would, if this Act were read without reference to section 8, paragraph 81(1)(*a*) and subsection 81(4), be the individual's income for the taxation year from an office or employment;

(*b*) all amounts that are included, or that would, but for paragraph 81(1)(*a*), be included, because of paragraph 56(1)(*n*) or (*o*) in computing the individual's income for the taxation years; and

(*c*) the total of all amounts each of which would, if this Act were read without reference to paragraph 81(1)(*a*), be the individual's income for the taxation year from a business carried on by the individual otherwise than as a specified member of a partnership.

Deemed payment on account of tax

(2) Subject to subsections (4) and (5), an eligible individual for a taxation year who files a return of income for the taxation year and who makes a claim under this subsection, is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount equal to the amount, if any, determined by the formula

$$A - B$$

where

A is

(*a*) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, the lesser of $500 and 20% of the amount, if any, by which the individual's working income for the taxation year exceeds $3,000, or

(*b*) if the individual had an eligible spouse or an eligible dependant, for the taxation year, the lesser of $1,000 and 20% of the amount, if any, by which the total of the working incomes of the individual and, if applicable, of the eligible spouse of the individual, for the taxation year, exceeds $3,000, and

B is

(*a*) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 15% of the amount, if any, by which the individual's adjusted net income for the taxation year exceeds $9,500, or

(*b*) if the individual had an eligible spouse or an eligible dependant, for the taxation year, 15% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse of the individual, for the taxation year, exceeds $14,500.

Deemed payment on account of tax — disability supplement

(3) An eligible individual for a taxation year who files a return of income for the taxation year and who may deduct an amount under subsection 118.3(1) in computing tax payable under this Part for the taxation year is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount equal to the amount, if any, determined by the formula

$$C - D$$

where

C is the lesser of $250 and 20% of the amount, if any, by which the individual's working income for the taxation year exceeds $1,750, and

D is

(*a*) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 15% of the amount, if any, by which the individual's adjusted net income for the taxation year exceeds $12,833;

(*b*) if the individual had an eligible spouse for the taxation year who was not entitled to deduct an amount under subsection 118.3(1) for the taxation year, or had an eligible dependant for the taxation year, 15% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds $21,167; or

(*c*) if the individual had an eligible spouse for the taxation year who was entitled to deduct an amount under subsection 118.3(1) for the taxation year, 7.5% of the amount, if any, by which the total of the adjusted net incomes of the individual and of the eligible spouse, for the taxation year, exceeds $21,167.

Eligible spouse deemed not to be an eligible individual

(4) An eligible spouse of an eligible individual for a taxation year is deemed, for the purpose of subsection (2), not to be an eligible individual for the taxation year if the eligible spouse made a joint application described in subsection (6) with the eligible individual and the eligible individual received an amount under subsection (7) in respect of the taxation year.

Amount deemed to be nil

(5) If an eligible individual had an eligible spouse for a taxation year and both the eligible individual and the eligible spouse make a claim for the taxation year under subsection (2), the amount deemed to have been paid under that subsection by each of them on account of tax payable under this Part for the taxation year, is nil.

Application for advance payment

(6) Subsection (7) applies to an individual for a taxation year if,

(*a*) at any time after January 1 and before September 1 of the taxation year, the individual makes an application (or in the case of an individual who has, at that time, a cohabiting spouse or common-law partner, the two of them make a joint application designating the individual for the purpose of subsection (7)), to the Minister in prescribed form, containing prescribed information; and

(*b*) where the individual and a cohabiting spouse or common-law partner have made a joint application referred to in paragraph (*a*)

(i) the individual's working income for the taxation year can reasonably be expected to be greater than the working income of the individual's cohabiting spouse or common-law partner for the taxation year, or

(ii) the individual can reasonably be expected to be deemed by subsection (3) to have paid an amount on account of tax payable under this Part for the taxation year.

Advance payment

(7) Subject to subsection (8), the Minister may pay to an individual before the end of January of the year following a taxation year, one or more amounts that, in total, do not exceed one-half of the total of the amounts that the Minister estimates will be deemed to be paid by the individual under subsection (2) or (3) at the end of the taxation year, and any amount paid by the Minister under this subsection is deemed to have been received by the individual in respect of the taxation year.

Limitation — advance payment

(8) No payment shall be made under subsection (7) to an individual in respect of a taxation year

(*a*) if the total amount that the Minister may pay under that subsection is less than $100; or

(*b*) before the day on which the individual has filed a return of income for a preceding taxation year in respect of which the individual received a payment under that subsection.

Notification to Minister

(9) If, in a taxation year, an individual makes an application described in subsection (6), the individual shall notify the Minister of the occurrence of any of the following events before the end of the month following the month in which the event occurs

(*a*) the individual ceases to be resident in Canada in the taxation year;

(*b*) the individual ceases, before the end of the taxation year, to be a cohabiting spouse or common-law partner of another person with whom the individual made the application;

(*c*) the individual enrols as a full-time student at a designated educational institution in the taxation year; or

(*d*) the individual is confined to a prison or similar institution in the taxation year.

Special rule for eligible dependant

(10) For the purpose of applying subsections (2) and (3), an individual (referred to in this subsection as the "child") is deemed not to be an eligible dependant of an eligible individual for a taxation year if the child is an eligible dependant of another eligible individual for the taxation year and both eligible individuals identified the child as an eligible dependant for the purpose of claiming or computing an amount under this section for the taxation year.

Effect of bankruptcy

(11) For the purpose of this subdivision, if an individual becomes bankrupt in a particular calendar year

(*a*) notwithstanding subsection 128(2), any reference to the taxation year of the individual (other than in this subsection) is deemed to be a reference to the particular calendar year, and

(*b*) the individual's working income and adjusted net income for the taxation year ending on December 31 of the particular calendar year is deemed to include the individual's working income and adjusted net income for the taxation year that begins on January 1 of the particular calendar year.

Special rules in the event of death

(12) For the purpose of this subdivision, if an individual dies after June 30 of a calendar year

(*a*) the individual is deemed to be resident in Canada from the time of death until the end of the year and to reside at the same place in Canada as the place where the individual resided immediately before death;

(*b*) the individual is deemed to be the same age at the end of the year as the individual would have been if the individual were alive at the end of the year;

(*c*) the individual is deemed to be the cohabiting spouse or common-law partner of another individual (referred to in this paragraph as the "surviving spouse") at the end of the year if,

(i) immediately before death, the individual was the cohabiting spouse or common-law partner of the surviving spouse, and

(ii) the surviving spouse is not the cohabiting spouse or common-law partner of another individual at the end of the year, and

(*d*) any return of income filed by a legal representative of the individual is deemed to be a return of income filed by the individual.

Modification for purposes of provincial program

122.71 The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under subsections 122.7(2) and (3) with respect to an eligible individual resident in the province at the end of the taxation year shall, for the purpose of calculating amounts deemed to be paid on account of the tax payable of an individual under those subsections, be replaced by amounts determined in accordance with the agreement.

(2) Subsection (1) applies to the 2007 and subsequent taxation years except that subsections 122.7(6) to (8), as enacted by subsection (1), apply to the 2008 and subsequent taxation years.

33. (1) The portion of paragraph 127(5)(*a*) of the Act before clause (ii)(B) is replaced by the following:

(*a*) the total of

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired before the end of the year, of the taxpayer's apprenticeship expenditure for the year or a preceding taxation year, of the taxpayer's child care space amount for the year or a preceding taxation year, of the taxpayer's flow-through mining expenditure for the year or a preceding taxation year, of the taxpayer's pre-production mining expenditure for the year or a preceding taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the year or at the end of a preceding taxation year, and

(ii) the lesser of

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year, of the taxpayer's apprenticeship expenditure for a subsequent taxation year, of the taxpayer's child care space amount for a subsequent taxation year, of the taxpayer's flow-through mining expenditure for a subsequent taxation year, of the taxpayer's pre-production mining expenditure for a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection for the subsequent taxation year, and

(2) Subsection 127(7) of the Act is replaced by the following:

Investment tax credit of testamentary trust

(7) If, in a particular taxation year of a taxpayer who is a beneficiary under a testamentary trust or under an *inter vivos* trust that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (*a*), (*a.1*), (*a.4*), (*a.5*), (*b*) or (*e.1*) of the definition "investment tax credit" in subsection (9) for its taxation year that ends in that particular taxation year, the trust may, in its return of income for its taxation year that ends in that particular taxation year, designate the portion of that amount that can, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the trust in respect of any other beneficiary of the trust, and that portion shall be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and shall be deducted in computing the investment tax credit of the trust at the end of its taxation year that ends in that particular taxation year.

(3) The portion of subsection 127(8) of the Act before paragraph (*a*) is replaced by the following:

Investment tax credit of partnership

(8) Subject to subsections (28) and (28.1), where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular taxation year, under paragraph (*a*), (*a.1*), (*a.4*), (*a.5*), (*b*) or (*e.1*) of the definition "investment tax credit" in subsection (9), if

(4) Subparagraph 127(8.2)(*b*)(i) of the Act is amended by striking out the word "or" at the end of clause (A.1) and by adding the following after clause (A.1):

(A.2) an amount that would be the child care space amount in respect of a property of the partnership if the reference to "$10,000" in paragraph (*a*) of the definition "child care space amount" in subsection (9) were read as a reference to "$40,000" and paragraph (*b*) of that definition were read without reference to "25% of", or

(5) Paragraph 127(8.31)(*a*) of the Act is replaced by the following:

(*a*) the total of all amounts each of which is an amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (*a*), (*a.1*), (*a.4*), (*a.5*), (*b*) or (*e.1*) of the definition "investment tax credit" in subsection (9) for a taxation year that is the fiscal period,

(6) Subsection 127(8.31) of the Act is amended by adding the word "and" at the end of subparagraph (*b*)(i), by striking out the word "and" at the end of subparagraph (*b*)(ii), and by repealing subparagraph (*b*)(iii).

(7) The definition "eligible apprentice" in subsection 127(9) of the Act is replaced by the following;

"eligible apprentice" *« apprenti admissible »*

"eligible apprentice" means an individual who is employed in Canada in a trade prescribed in respect of a province or in respect of Canada, during the first twenty-four months of the individual's apprenticeship contract registered with the province or Canada, as the case maybe, under an apprenticeship program designed to certify or license individuals in the trade;

(8) Paragraph (*a*) of the definition "flow-through mining expenditure" in subsection 127(9) of the Act is replaced by the following:

(*a*) that is a Canadian exploration expense incurred by a corporation after March 2007 and before 2009 (including, for greater certainty, an expense that is deemed by subsection 66(12.66) to be incurred before 2009) in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (*a*) or (*d*) of the definition "mineral resource" in subsection 248(1),

(9) Paragraphs (*c*) and (*d*) of the definition "flow-through mining expenditure" in subsection 127(9) of the Act are replaced by the following:

(*c*) an amount in respect of which is renounced in accordance with subsection 66(12.6) by the corporation to the taxpayer (or a partnership of which the taxpayer is a member) under an agreement described in that subsection and made after March 2007 and before April 2008, and

(*d*) that is not an expense that was renounced under subsection 66(12.6) to the corporation (or a partnership of which the corporation is a member), unless that renunciation was under an agreement described in that subsection and made after March 2007 and before April 2008;

(10) The definition "investment tax credit" in subsection 127(9) of the Act is amended by adding the following after paragraph (*a.4*):

(*a.5*) the child care space amount of the taxpayer for the taxation year,

(11) Paragraph (*e.1*) of the definition "investment tax credit" in subsection 127(9) of the Act is amended by striking out the word "or" at the end of subparagraph (iv), by striking out the word "and" at the end of subparagraph (v) and by adding the following after subparagraph (v):

(vi) the amount of eligible salary and wages payable by the taxpayer to an eligible apprentice under paragraph (11.1)(*c.4*), to the extent that that reduction had the effect of reducing the amount of an apprenticeship expenditure of the taxpayer, or

(vii) the amount of an eligible child care space expenditure of the taxpayer under paragraph (11.1)(*c.5*), to the extent that that reduction had the effect of reducing the amount of a child care space amount of the taxpayer, and

(12) Paragraph (*f.1*) of the definition "specified percentage" in subsection 127(9) is replaced by the following:

(*f.1*) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced

(i) a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), 20%,

(ii) the amount of eligible salary and wages payable (by the taxpayer) to an eligible apprentice under paragraph (11.1)(*c.4*), 10%, or

(iii) the amount of the taxpayer's eligible child care space expenditure under paragraph (11.1)(*c.5*), 25%;

(13) Subsection 127(9) of the Act is amended by adding the following definitions in alphabetical order:

"child care space amount" *« somme relative à une place en garderie »*

"child care space amount" of a taxpayer for a taxation year is, if the provision of child care spaces is ancillary to one or more businesses of the taxpayer that are carried on in Canada in the taxation year and that do not otherwise include the provision of child care spaces, the lesser of (*a*) the amount obtained when $10,000 is multiplied by the number of new child care spaces created by the taxpayer during the taxation year in a licensed child care facility for the benefit of children of the taxpayer's employees, or of a combination of children of the taxpayer's employees and other children; and

(*b*) 25% of the taxpayer's eligible child care space expenditure for the taxation year;

"eligible child care space expenditure"
« dépense admissible relative à une place en garderie »

"eligible child care space expenditure" of a taxpayer for a taxation year is the total of all amounts each of which is an amount

(*a*) that is incurred by the taxpayer in the taxation year for the sole purpose of the creation of one or more new child care spaces in a licensed child care facility operated for the benefit of children of the taxpayer's employees, or of a combination of children of the taxpayer's employees and other children, and

(*b*) that is

(i) incurred by the taxpayer to acquire depreciable property of a prescribed class (other than a specified property) for use in the child care facility, or

(ii) incurred by the taxpayer to make a specified child care start-up expenditure in respect of the child care facility;

"specified child care start-up expenditure"
« dépense de démarrage déterminée pour la garde d'enfants »

"specified child care start-up expenditure" of a taxpayer in respect of a child care facility is an expenditure incurred by the taxpayer (other than to acquire a depreciable property) that is

(*a*) a landscaping cost incurred to create, at the child care facility, an outdoor play area for children,

(*b*) an architectural fee for designing the child care facility or a fee for advice on planning, designing and establishing the child care facility,

(*c*) a cost of construction permits in respect of the child care facility,

(*d*) an initial licensing or regulatory fee in respect of the child care facility, including fees for mandatory inspections,

(*e*) a cost of educational materials for children, or

(*f*) a similar amount incurred for the sole purpose of the initial establishment of the child care facility;

"specified property"
« bien déterminé »

"specified property" in respect of a taxpayer means any property that is

(*a*) a motor vehicle or any other motorized vehicle, or

(*b*) a property that is, or is located in, or attached to, a residence

(i) of the taxpayer,

(ii) an employee of the taxpayer,

(iii) a person who holds an interest in the taxpayer, or

(iv) a person related to a person referred to in any of subparagraphs (*i*) to (*iii*);

(14) Paragraph 127(11.1)(*c.4*) of the Act is replaced by the following:

(*c.4*) the amount of a taxpayer's eligible salary and wages for a taxation year is deemed to be the amount of the taxpayer's eligible salary and wages for the year otherwise determined less the amount of any government assistance or non-government assistance in respect of the eligible salary and wages for the year that, at the time of the filing of the taxpayer's return of income for the year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive;

(*c.5*) the amount of a taxpayer's eligible child care space expenditure for a taxation year is deemed to be the amount of the taxpayer's eligible child care space expenditure for the taxation year otherwise determined less the amount of any government assistance or non-government assistance in respect of the eligible child care space expenditure for the taxation year that, at the time of the filing of the taxpayer's return of income for the taxation year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive; and

(15) Subsection 127(11.2) of the Act is replaced by the following:

Time of expenditure and acquisition

(11.2) In applying subsections (5), (7) and (8), paragraphs (*a*), (*a.1*) and (*a.5*) of the definition "investment tax credit" in subsection (9) and section 127.1,

(*a*) certified property, qualified property and first term shared-use-equipment are deemed not to have been acquired, and

(*b*) expenditures incurred to acquire property described in subparagraph 37(1)(*b*)(i) or included in an eligible child care expenditure are deemed not to have been incurred

by a taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(*c*) and 13(28)(*d*), and subparagraph (27.12)(*b*)(i).

(16) Section 127 of the Act is amended by adding the following after subsection (27):

Recapture of investment tax credit — child care space amount

(27.1) There shall be added to a taxpayer's tax otherwise payable under this Part for a particular taxation year, the total of all amounts each of which is an amount determined under subsection (27.12) in respect of a disposition by the taxpayer in the particular taxation year of a property a percentage of the cost of which can reasonably be considered to have been included in the child care space amount of the taxpayer for a taxation year, if the property was acquired in respect of a child care space that was created at a time that is less than 60 months before the disposition.

Disposition

(27.11) For the purpose of subsection (27.1),

(*a*) if a particular child care space, in respect of which any amount is included in the child care space amount of a taxpayer or a partnership for a taxation year or a fiscal period, ceases at any particular time to be available, the child care space is, except where the child care space has been disposed of by the taxpayer or the partnership before the particular time, deemed to be a property

(i) disposed of by the taxpayer or the partnership, as the case maybe, at the particular time,

(ii) a percentage of the cost of which can reasonably be considered to be included in the child care space amount of the taxpayer or the partnership, as the case maybe, for a taxation year or a fiscal period, and

(iii) acquired in respect of a child care space that was created at the time the child care space was created,

(*b*) child care spaces that cease to be available are deemed to so cease in reverse chronological order to their creation, and

(*c*) a property acquired by a taxpayer or a partnership in respect of a child care space is deemed to be disposed of by the taxpayer or the partnership, as the case maybe, in a disposition described in clause (27.12)(*b*)(ii)(B) if the property is leased by the taxpayer or the partnership to a lessee for any purpose or is converted to a use by the taxpayer or the partnership other than to a use for the child care space.

Amount of recapture

(27.12) For the purposes of subsection (27.1) and (27.11), the amount determined under this subsection in respect of a disposition of a property by a taxpayer or a partnership is,

(*a*) where the property disposed of is a child care space, the amount that can reasonably be considered to have been included under paragraph (*a.5*) of the definition "investment tax credit" in subsection (9) in respect of the taxpayer or partnership in respect of the child care space, and

(*b*) in any other case, the lesser of,

(i) the amount that can reasonably be considered to have been included under paragraph (*a.5*) of the definition "investment tax credit" in subsection (9) in respect of the taxpayer or partnership in respect of the cost of the property, and

(ii) 25% of

(A) if the property, or a part of the property, is disposed of to a person who deals at arm's length with the taxpayer or the partnership, the proceeds of disposition of the property, or of the part of the property, and

(B) in any other case, the fair market value of the property or of the part of the property, at the time of the disposition.

(17) Section 127 of the Act is amended by adding the following after subsection (28):

Recapture of partnership's investment tax credits— child care property

(28.1) For the purpose of computing the amount determined under subsection (8) in respect of a partnership at the end of a particular fiscal period of the partnership, there shall be deducted the total of all amounts, each of which is an amount determined under subsection (27.12) in respect of a disposition by the partnership in the particular fiscal period of a property a percentage of the cost of which can reasonably be considered to have been included in the child care space amount of the partnership for a fiscal period, if the property was acquired in respect of a child care space that was created at a time that is less than 60 months before the disposition.

(18) Subsection 127(30) of the Act is replaced by the following:

Addition to tax

(30) Where a taxpayer is a member of a partnership at the end of a fiscal period of the partnership, there shall be added to the taxpayer's tax otherwise payable under this Part for the taxpayer's taxation year in which that fiscal period ends the amount that can reasonably be considered to be the taxpayer's share of the amount, if any, by which

(*a*) the total of

(i) the total of all amounts each of which is the lesser of the amounts described in paragraphs 28(*d*) and (*e*) in respect of the partnership in respect of the fiscal period,

(ii) the total of all amounts each of which is the lesser of the amounts described in paragraphs 35(*c*) and (*d*) in respect of the partnership in respect of the fiscal period, and

(iii) the total of all amounts each of which is an amount required by subsection (28.1) to be deducted in computing the amount determined in respect of the partnership in respect of the fiscal period under subsection (8),

exceeds

(*b*) the amount that would be determined in respect of the partnership under subsection (8) if that subsection were read without reference to subsections (28), (28.1), and (35).

(19) Subsections (1) to (5) and (15) to (18) apply on and after March 19, 2007.

(20) Subsection (6) applies to the 2007 and subsequent taxation years.

(21) Subsection (7) applies to taxation years ending on or after May 2, 2006.

(22) Subsections (8) and (9) apply to expenses renounced under agreements made after March 2007.

(23) Subsections (10) and (13) apply to expenditures incurred on and after March 19, 2007.

(24) Subsections (11), (12) and (14) apply to taxation years that end on or after May 2, 2006, except that subparagraph (*e.1*) (vii) of the definition "investment tax credit" in subsection 127(9) of the Act, as enacted by subsection (11), subparagraph (*f.1*) (iii) of the definition "specified percentage" in subsection 127(9) of the Act, as enacted by

subsection (12), and paragraph 127(11.1)(*c.5*) of the Act, as enacted by subsection (14), apply to taxation years that end on or after March 19, 2007.

34. (1) The portion of subsection 141(5) of the Act before paragraph (*a*) is replaced by the following:

Exclusion from taxable Canadian property

(5) For the purpose of paragraph (*d*) of the definition "taxable Canadian property" in subsection 248(1), a share of the capital stock of a corporation is deemed to be listed at any time on a designated stock exchange if

(2) Subsection (1) applies on and after the day on which this Act is assented to.

35. (1) The definition "contribution" in subsection 146.1(1) of the Act is replaced by the following:

"contribution" « *cotisation* »

"contribution", into an education savings plan, does not include an amount paid into the plan under the *Canada Education Savings Act* or under a designated provincial program;

(2) Paragraph (*c.1*) of the definition "trust" in subsection 146.1(1) of the Act is replaced by the following:

(*c.1*) the repayment of amounts (and the payment of amounts related to that repayment) under the *Canada Education Savings Act* or under a designated provincial program,

(3) Subsection 146.1(1) of the Act is amended by adding the following in alphabetical order:

"designated provincial program" « *programme provincial désigné* »

"designated provincial program" means

(*a*) a program administered pursuant to an agreement entered into under section 12 of the *Canada Education Savings Act*, or

(*b*) a prescribed program;

(4) Subsections (1) to (3) apply to the 2007 and subsequent taxation years.

36. (1) The portion of subsection 149.1(1) of the Act before the definition "capital gains pool" is replaced by the following:

Definitions

149.1 (1) In this section and section 149.2,

(2) Subsection 149.1(1) of the Act is amended by adding the following definitions in alphabetical order:

"divestment obligation percentage" « *pourcentage de dessaisissement* »

"divestment obligation percentage"of a private foundation for a particular taxation year, in respect of a class of shares of the capital stock of a corporation, is the percentage, if any, greater than 0%, determined by the formula

$$A + B - C$$

where

A is the percentage determined under this definition in respect of the private foundation in respect of the class for the preceding taxation year,

B is the total of all percentages, each of which is the portion of a net increase in the excess corporate holdings percentage of the private foundation in respect of the class for the particular taxation year or for a preceding taxation year that is allocated to the particular taxation year in accordance with subsection 149.2(5), and

C is the total of all percentages, each of which is the portion of a net decrease in the excess corporate holdings percentage of the private foundation in respect of the class for the particular taxation year or for a preceding taxation year that is allocated to the particular taxation year in accordance with subsection 149.2(7);

"entrusted shares percentage" *« pourcentage d'actions visées par une stipulation »*

"entrusted shares percentage"of a private foundation, in respect of a class of shares of the capital stock of a corporation, at any particular time means the percentage of the issued and outstanding shares of that class that are held at the particular time by the private foundation that are shares that were acquired by the private foundation by way of a gift that was subject to a trust or direction that the shares are to be held by the private foundation for a period ending not earlier than the particular time, if the gift was made

(*a*) before March 19, 2007,

(*b*) on or after March 19, 2007 and before March 19, 2012

(i) under the terms of a will that was executed by a taxpayer before March 19, 2007 and not amended, by codicil or otherwise, on or after March 19, 2007, and

(ii) in circumstances where no other will of the taxpayer was executed or amended on or after March 19, 2007, or

(*c*) on or after March 19, 2007, under the terms of a testamentary or *inter vivos* trust created before March 19, 2007, and not amended on or after March 19, 2007;

"excess corporate holdings percentage" *« pourcentage de participation excédentaire »*

"excess corporate holdings percentage"of a private foundation, in respect of a class of shares of the capital stock of a corporation, at any time means

(*a*) if the private foundation is not, at that time, a registered charity, 0%,

(*b*) if the private foundation holds, at that time, an insignificant interest in respect of the class, 0%, and

(*c*) in any other case, the number of percentage points, if any, by which the total corporate holdings percentage of the private foundation in respect of the class, at that time, exceeds the greater of 20% and the entrusted shares percentage, at that time, of the private foundation in respect of the class;

"material transaction"
« *opération importante* »

"material transaction"of a private foundation, in respect of a class of shares of the capital stock of a corporation, means a transaction or a series of transactions or events in shares of the class, in respect of which the total fair market value of the shares of the class that are acquired or disposed of by the private foundation or any relevant person in respect of the private foundation as part of the transaction or series (determined at the time of the transaction, or at the end of the series, as the case may be) exceeds the lesser of

(*a*) $100,000, and

(*b*) 0.5% of the total fair market value of all of the issued and outstanding shares of the class;

"non-qualifying private foundation"
« *fondation privée non admissible* »

"non-qualifying private foundation" at any particular time after March 19, 2012, means a private foundation

(*a*) that had, on March 18, 2007, an excess corporate holdings percentage in respect of a class of shares of the capital stock of a corporation, and

(*b*) that, for each of the private foundation's taxation years that begin after March 18, 2007 and end before the particular time, subsection 149.2(8) applies to replace the reference to 20% in the definition "excess corporate holdings percentage" with another percentage;

"original corporate holdings percentage"
« *pourcentage de participation initiale* »

"original corporate holdings percentage" of a private foundation, in respect of a class of shares of the capital stock of a corporation, means the total corporate holdings percentage of the private foundation, in respect of that class, held on March 18, 2007;

"relevant person"
« *personne intéressée* »

"relevant person"in respect of a private foundation means a person who, at any time in respect of which the expression is relevant, deals not at arm's length with the private foundation (determined as if subsection 251(2) were applied as if the private foundation were a corporation), but does not include

(*a*) a person who at that time is considered to deal not at arm's length with the private foundation solely because of a right referred to in paragraph 251(5)(*b*), or

(*b*) an individual

(i) who at that time has attained the age of 18 years and lives separate and apart from any other individual (referred to in this definition as a "controlling individual") who would, if the private foundation were a corporation, control, or be a member of a related group that controls, the private foundation, and

(ii) in respect of whom the Minister is satisfied, upon review of an application by the private foundation, that the individual would, if subsection 251(1) were read without reference to its paragraphs (*a*) and (*b*), at that time, deal at arm's length with all controlling individuals;

"total corporate holdings percentage" *« pourcentage de participation totale »*

"total corporate holdings percentage" of a private foundation, in respect of a class of shares of the capital stock of a corporation, at any particular time means the percentage of the issued and outstanding shares of that class that are held at that time by the private foundation, or by a relevant person in respect of the private foundation who holds a material interest in respect of that class;

(3) Paragraph 149.1(4)(*c*) of the Act is replaced by the following:

(*c*) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(4) The portion of paragraph 149.1(12)(*a*) of the Act after subparagraph (ii) is replaced by the following:

but, for the purpose of paragraph (3)(*c*), a charitable foundation is deemed not to have acquired control of a corporation if it has not purchased or otherwise acquired for consideration more than 5% of the issued shares of any class of the capital stock of that corporation;

(5) Subsection 149.1(15) of the Act is amended by striking out the word "and" at the end of paragraph (*a*), by adding the word "and" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) if, at the end of a taxation year of a private foundation that is a registered charity, the private foundation holds more than an insignificant interest in respect of a class of shares of the capital stock of a corporation, the Minister shall make available to the public in such manner as the Minister deems appropriate,

(i) the name of the corporation,

(ii) in respect of each class of shares of the corporation, that portion of the total corporate holdings percentage of the private foundation in respect of the class that is attributable to

(A) holdings of shares of that class by the private foundation, and

(B) the total of all holdings of shares of that class by relevant persons in respect of the private foundation, and

(iii) the opinion of the Minister, if any, as to whether the private foundation is, at a particular time, a non-qualifying private foundation.

(6) Subsections (1) and (2) apply on and after March 19, 2007.

(7) Subsections (3) to (5) apply to taxation years, of foundations, that begin after March 18, 2007, except that subsections (3) and (4) do not apply to a taxation year of a private foundation if subsection 149.2(8) of the Act, as enacted by clause 37(1), applies to the private foundation in respect of any class of shares of the capital stock of a corporation.

37. (1) The Act is amended by adding the following after section 149.1:

Material and insignificant interests

149.2 (1) In this section and section 149.1,

(*a*) a person has, at any time, a material interest in respect of a class of shares of the capital stock of a corporation if, at that time,

(i) the percentage of the shares of that class held by the person exceeds 0.5% of all the issued and outstanding shares of that class, or

(ii) the fair market value of the shares so held exceeds $100,000; and

(*b*) a private foundation has, at any time, an insignificant interest in respect of a class of shares of the capital stock of a corporation if, at that time, the percentage of shares of that class held by the private foundation does not exceed 2% of all the issued and outstanding shares of that class.

Material transaction — anti-avoidance

(2) If a private foundation or a relevant person in respect of the private foundation has engaged in one or more transactions or series of transactions or events, a purpose of which may reasonably be considered to be to avoid the application of the definition "material transaction", each of those transactions or series of transactions or events is deemed to be a material transaction.

Net increase in excess corporate holdings percentage

(3) The net increase in the excess corporate holdings percentage of a private foundation for a taxation year, in respect of a class of shares of the capital stock of a corporation, is the number of percentage points, if any, determined by the formula

$$A - B$$

where

A is the excess corporate holdings percentage of the private foundation at the end of the taxation year, in respect of the class, and

B is

(*a*) 0%, if

(i) at the beginning of the taxation year the private foundation was not both a private foundation and a registered charity, or

(ii) the private foundation was both a registered charity and a private foundation on March 18, 2007 and the taxation year is the first taxation year of the private foundation that begins after that date; and

(*b*) in any other case, the excess corporate holdings percentage of the private foundation in respect of the class at the end of its preceding taxation year.

Net decrease in excess corporate holdings percentage

(4) The net decrease in the excess corporate holdings percentage of a private foundation for a taxation year, in respect of a class of shares of the capital stock of a corporation, is the number of percentage points, if any, by which the percentage determined for B in the formula

in subsection (3) for the taxation year exceeds the percentage determined for A in that formula for the taxation year.

Allocation of net increase in excess corporate holdings percentage

(5) For the purpose of the description of B in the definition "divestment obligation percentage" in subsection 149.1(1), the net increase in the excess corporate holdings percentage of a private foundation in respect of a class of shares of the capital stock of a corporation, for a taxation year (in this subsection referred to as the "current year") is to be allocated in the following order:

(*a*) first to the divestment obligation percentage of the private foundation in respect of that class for the current year, to the extent that the private foundation has in the current year acquired for consideration shares of that class;

(*b*) then to the divestment obligation percentage of the private foundation in respect of that class for its fifth subsequent taxation year, to the extent of the lesser of

(i) that portion of the net increase in the excess corporate holdings percentage of the private foundation in respect of that class for the current year that is not allocated under paragraph (*a*), and

(ii) the percentage of the issued and outstanding shares of that class that were acquired by the private foundation in the current year by way of bequest;

(*c*) then to the divestment obligation percentage of the private foundation in respect of that class for its second subsequent taxation year, to the extent of the lesser of

(i) that portion of the net increase in the excess corporate holdings percentage of the private foundation in respect of that class for the current year that is not allocated under paragraph (*a*) or (*b*), and

(ii) the total of

(A) the percentage of the issued and outstanding shares of that class that were acquired by the private foundation in the current year by way of gift, other than from a relevant person or by way of bequest, and

(B) the portion of the net increase in the excess corporate holdings percentage of the private foundation that is attributable to the redemption, acquisition or cancellation of any of the issued and outstanding shares of that class in the current year by the corporation; and

(*d*) then to the divestment obligation percentage of the private foundation in respect of that class for its subsequent taxation year, to the extent of that portion of the net increase in the excess corporate holdings percentage of the private foundation in respect of that class for the current year that is not allocated under paragraph (*a*), (*b*) or (*c*).

Minister's discretion

(6) Notwithstanding subsection (5), on application by a private foundation, the Minister may, if the Minister believes it would be just and equitable to do so, reallocate any portion of the net increase in the excess corporate holdings percentage of the private foundation in respect of a class of shares of the capital stock of a corporation for a taxation year, that would otherwise be allocated under subsection (5) to the private foundation's divestment obligation

percentage in respect of that class for a particular taxation year, to the private foundation's divestment obligation percentage in respect of that class for any of the five taxation years subsequent to the particular taxation year.

Allocation of net decrease in excess corporate holdings percentage

(7) For the purpose of the description of C in the definition "divestment obligation percentage" in subsection 149.1(1), the net decrease in the excess corporate holdings percentage of a private foundation in respect of a class of shares of the capital stock of a corporation for a taxation year (in this subsection referred to as the "current year") is to be allocated in the following order:

(*a*) first, to the divestment obligation percentage of the private foundation in respect of that class for the current year, to the extent of that divestment obligation percentage; and

(*b*) then to the divestment obligation percentage of the private foundation in respect of that class for a subsequent taxation year of the private foundation (referred to in this paragraph as the "subject year"), to the extent of the lesser of

(i) that portion of the net decrease in the excess corporate holdings percentage of the private foundation in respect of that class for the current year that is not allocated under paragraph (*a*), or under this paragraph, to the divestment obligation percentage of the private foundation in respect of that class for a taxation year of the private foundation that precedes the subject year, and

(ii) the amount of the divestment obligation percentage of the private foundation in respect of that class for the subject year, calculated as at the end of the current year and without reference to this subsection.

Transitional rule

(8) If the original corporate holdings percentage of a private foundation in respect of a class of shares of the capital stock of a corporation exceeds 20%, for the purpose of applying the definition "excess corporate holdings percentage" in subsection 149.1(1) to

(*a*) the first taxation year of the private foundation that begins after March 18, 2007, the reference to 20% in that definition in respect of that class is to be read as the original corporate holdings percentage of the private foundation in respect of that class;

(*b*) taxation years of the private foundation that are after the taxation year referred to in paragraph (*a*) and that begin before March 19, 2012, the reference to 20% in that definition in respect of that class is to be read as the greater of

(i) 20%, and

(ii) the lesser of

(A) the total corporate holdings percentage of the private foundation in respect of the class at the end of the immediately preceding taxation year, and

(B) the original corporate holdings percentage in respect of that class;

(*c*) taxation years of the private foundation that begin after March 18, 2012 and before March 19, 2017, the reference to 20% in that definition in respect of that class is to be read as the greater of

(i) 20%, and

(ii) the lesser of

(A) the total corporate holdings percentage of the private foundation in respect of the class at the end of the preceding taxation year, and

(B) the number of percentage points, if any, by which the private foundation's original corporate holdings percentage in respect of that class exceeds 20%;

(*d*) taxation years of the private foundation that begin after March 18, 2017 and before March 19, 2022, the reference to 20% in that definition in respect of that class is to be read as the greater of

(i) 20%, and

(ii) the lesser of

(A) the total corporate holdings percentage of the private foundation in respect of the class at the end of the preceding taxation year, and

(B) the number of percentage points, if any, by which the private foundation's original corporate holdings percentage in respect of that class exceeds 40%; and

(*e*) taxation years of the private foundation that begin after March 18, 2022 and before March 19, 2027, the reference to 20% in that definition in respect of that class is to be read as the greater of

(i) 20%, and

(ii) the lesser of

(A) the total corporate holdings percentage of the private foundation in respect of the class at the end of the preceding taxation year, and

(B) the number of percentage points, if any, by which the private foundation's original corporate holdings percentage in respect of that class exceeds 60%.

(2) Subsection (1) applies to taxation years, of private foundations, that begin on or after March 19, 2007.

38. (1) Paragraph 152(1)(*b*) of the Act is replaced by the following:

(*b*) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

(2) Paragraph 152(4.2)(*b*) of the Act is replaced by the following:

(*b*) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

(3) Subsections (1) and (2) apply to the 2007 and subsequent taxation years.

39. (1) Paragraph 153(1)(*a*) of the Act is replaced by the following:

(*a*) salary, wages or other remuneration, other than amounts described in subsection 115(2.3) or 212(5.1),

(2) Paragraph 153(1)(*g*) of the Act is replaced by the following:

(*g*) fees, commissions or other amounts for services, other than amounts described in subsection 115(2.3) or 212(5.1),

40. (1) Paragraphs (*a*) and (*b*) of the definition "instalment threshold" in subsection 156.1(1) of the Act are replaced by the following:

(*a*) in the case of an individual resident in the Province of Quebec at the end of the year, $1,800, and

(*b*) in any other case, $3,000;

(2) Subsection (1) applies to the 2008 and subsequent taxation years and, for the purpose of applying subsection 156.1(2) of the Act in respect of the 2008 and 2009 taxation years, to the 2006 and 2007 taxation years.

41. (1) The portion of subsection 157(1) of the Act before subparagraph (*a*)(ii) is replaced by the following:

Payment by corporation

157. (1) Subject to subsections (1.1) and (1.5), every corporation shall, in respect of each of its taxation years, pay to the Receiver General

(*a*) either

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the total of the amounts estimated by it to be the taxes payable by it under this Part and Parts VI, VI.1 and XIII.1 for the year,

(2) Paragraph 157(1)(*b*) of the Act is replaced by the following:

(*b*) the remainder of the taxes payable by it under this Part and Parts VI, VI.1 and XIII.1 for the year on or before its balance-due day for the year.

(3) Section 157 of the Act is amended by adding the following after subsection (1):

Special case

(1.1) A small-CCPC may, in respect of each of its taxation years, pay to the Receiver General

(*a*) one of the following:

(i) on or before the last day of each three-month period in the taxation year (or if the period that remains in a taxation year after the end of the last such three-month period is less than three months, on or before the last day of that remaining period), an amount equal to 1/4 of the total of the amounts estimated by it to be the taxes payable by it under this Part and Part VI.1 for the taxation year,

(ii) on or before the last day of each three-month period in the taxation year (or if the period that remains in a taxation year after the end of the last such three-month period is less than three months, on or before the last day of that remaining period), an amount equal to 1/4 of its first instalment base for the taxation year, or

(iii) on or before the last day

(A) of the first period in the taxation year not exceeding three months, an amount equal to 1/4 of its second instalment base for the taxation year, and

(B) of each of the following three-month periods in the taxation year (or if the period that remains in a taxation year after the end of the last such three-month period is less than three months, on or before the last day of that remaining period), an amount equal to 1/3 of the amount remaining after deducting the amount computed pursuant to clause (A) from its first instalment base for the taxation year; and

(*b*) the remainder of the taxes payable by it under this Part and Part VI.1 for the taxation year on or before its balance-due day for the taxation year.

Small-CCPC

(1.2) For the purpose of subsection (1.1), a small-CCPC, at a particular time during a taxation year, is a Canadian-controlled private corporation

(*a*) for which the amount determined under subsection (1.3) for the taxation year, or for the preceding taxation year, does not exceed $400,000;

(*b*) for which the amount determined under subsection (1.4) for the taxation year, or for the preceding taxation year, does not exceed $10 million;

(*c*) in respect of which an amount is deducted under section 125 of the Act in computing the corporation's tax payable for the taxation year or for the preceding taxation year; and

(*d*) that has throughout the 12-month period that ends at the time its last remittance under this section is due,

(i) remitted, on or before the day on or before which the amounts were required to be remitted, all amounts that were required to be remitted under subsection 153(1), under Part IX of the *Excise Tax Act*, under subsection 82(1) of the *Employment Insurance Act* or under subsection 21(1) of the *Canada Pension Plan*; and

(ii) filed, on or before the day on or before which the returns were required to be filed, all returns that were required to be filed under this Act or under Part IX of the *Excise Tax Act*.

Taxable income — small-CCPC

(1.3) The amount determined under this subsection in respect of a corporation for a particular taxation year is

(*a*) if the corporation is not associated with another corporation in the particular taxation year, the amount that is the corporation's taxable income for the particular taxation year, or

(*b*) if the corporation is associated with another corporation in the particular taxation year, the amount that is the total of all amounts each of which is the taxable income of the corporation for the particular taxation year or the taxable income of a corporation with which it is associated in the particular taxation year for a taxation year of that other corporation that ends in the particular taxation year.

Taxable capital — small-CCPC

(1.4) The amount determined under this subsection in respect of a corporation for a particular taxation year is

(*a*) if the corporation is not associated with another corporation in the particular taxation year, the amount that is the corporation's taxable capital employed in Canada (within the meaning assigned by section 181.2) for the particular taxation year, or

(*b*) if the corporation is associated with another corporation in the particular taxation year, the amount that is the total of all amounts each of which is the taxable capital employed in Canada (within the meaning assigned by section 181.2) of the corporation for the particular taxation year or the taxable capital employed in Canada (within the meaning assigned by section 181.2) of a corporation with which it is associated in the particular taxation year for a taxation year of that other corporation that ends in the particular taxation year.

No longer a small-CCPC

(1.5) Notwithstanding subsection (1), where a corporation, that has remitted amounts in accordance with subsection (1.1), ceases at any particular time in a taxation year to be eligible to remit in accordance with subsection (1.1), the corporation shall pay to the Receiver General, the following amounts for the taxation year,

(*a*) on or before the last day of each month, in the taxation year, that ends after the particular time, either

(i) the amount determined by the formula

$$(A-B)/C$$

where

A is the total of the amounts estimated by the corporation to be the taxes payable by it under this Part and Parts VI, VI.1 and XIII.1 for the taxation year,

B is the total of all payments payable by the corporation in the taxation year in accordance with subsection (1.1), and

C is the number of months that end in the taxation year and after the particular time, or

(ii) the total of

(A) the amount determined by the formula

$$(A-B)/C$$

where

A is the corporation's first instalment base for the taxation year,

B is the total of all payments payable by the corporation in the taxation year in accordance with subsection (1.1), and

C is the number of months that end in the taxation year and after the particular time; and

(B) the amount obtained when the estimated tax payable by the corporation, if any, under Part VI and XIII.1 for the taxation year is divided by the number of months that end in the taxation year and after the particular time; and

(*b*) the remainder of the taxes payable by it under this Part and Parts VI, VI.1 and XIII.1 for the taxation year on or before its balance-due date for the taxation year.

(4) Subsection 157(2.1) of the Act is replaced by the following:

$3,000 threshold

(2.1) A corporation may, instead of paying the instalments required for a taxation year by paragraph (1)(*a*) or by subsection (1.1), pay to the Receiver General, under paragraph (1)(*b*), the total of the taxes payable by it under this Part and Parts VI, VI.1 and XIII.1 for the taxation year, if

(*a*) the total of the taxes payable under this Part and Parts VI, VI.1 and XIII.1 by the corporation for the taxation year (determined before taking into consideration the specified future tax consequences for the year) is equal to or less than $3,000; or

(*b*) the corporation's first instalment base for the year is equal to or less than $3,000.

(5) The portion of subsection 157(3) of the Act before paragraph (*a*) is replaced by the following:

Reduced instalments

(3) Notwithstanding subsection (1) and (1.5), the amount payable under subsection (1) or (1.5) for a taxation year by a corporation to the Receiver General on or before the last day of any month in the year is deemed to be the amount, if any, by which

(6) Section 157 of the Act is amended by adding the following after subsection (3):

Amount of payment - three-month period

(3.1) Notwithstanding subsection (1.1), the amount payable under subsection (1.1) for a taxation year by a corporation to the Receiver General on or before the last day of any period in the year is deemed to be the amount, if any, by which

(*a*) the amount so payable as determined under that subsection for the period

exceeds the total of

(*b*) 1/4 of the corporation's dividend refund (within the meaning assigned by subsection 129(1)) for the taxation year, and

(*c*) 1/4 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the taxation year.

(7) Subsections (1) to (6) apply to taxation years that begin after 2007.

42. (1) Subsection 161(4.1) of the Act is replaced by the following:

Limitation — corporations

(4.1) For the purposes of subsection (2) and section 163.1, where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), (1.1) or (1.5), as the case may be, the corporation is deemed to have been liable to pay on or before each day on or before which subparagraph 157(1)(*a*)(i), (ii) or (iii), subparagraph 157(1.1)(*a*)(i), (ii) or (iii), or subparagraph 157(1.5)(*a*)(i) or (ii), as the case may be, requires a part or instalment to be made equal to the amount, if any, by which

(*a*) the part or instalment due on that day computed in accordance with whichever allowable method in the circumstances gives rise to the least total amount of such parts or instalments of tax for the year, computed by reference to

(i) the total of the taxes payable under this Part and Parts VI, VI.1 and XIII.1 by the corporation for the year, determined before taking into consideration the specified future tax consequences for the year,

(ii) its first instalment base for the year, or

(iii) its second instalment base and its first instalment base for the year,

exceeds

(*b*) the amount, if any, determined under any of paragraphs 157(3)(*b*) to (*e*) or under paragraph 157(3.1)(*b*) or (*c*), as the case may be, in respect of that instalment.

(2) Subsections (1) applies to taxation years that begin after 2007.

43. (1) Subsection 163(2) of the Act is amended by adding the following after paragraph (*c.2*):

(*c.3*) the amount, if any, by which

(i) the total of all amounts each of which is an amount that would be deemed by subsection 122.7(2) or (3) to be a payment on account of the person's tax payable under this Part or another person's tax payable under this Part for the year if those amounts were calculated by reference to the information provided in the return

exceeds

(ii) the total of all amounts each of which is an amount that is deemed by subsection 122.7(2) or (3) to be a payment on account of the person's tax payable under this Part and, where applicable, the other person's tax payable under this Part for the year,

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

44. (1) The definition "tobacco manufacturing" in subsection 182(2) of the Act is replaced by the following:

"tobacco manufacturing"
« fabrication du tabac »

"tobacco manufacturing" means any activity, other than an exempt activity, relating to the manufacture or processing in Canada of tobacco or tobacco products in or into any form that is, or would after any further activity become, suitable for smoking;

(2) Subsection 182(2) of the Act is amended by adding the following in alphabetical order:

"exempt activity" « *activité exclue* »

"exempt activity", of a particular corporation, means

(*a*) farming; or

(*b*) processing leaf tobacco, if

(i) that processing is done by, and is the principal business of, the particular corporation,

(ii) the particular corporation does not manufacture any tobacco product, and

(iii) the particular corporation is not related to any other corporation that carries on tobacco manufacturing (determined, in respect of the other corporation, as if the particular corporation did not exist and the definition "tobacco manufacturing" were read without reference to the words "in Canada");

(3) Subsections (1) and (2) apply to taxation years that end after 2006.

45. (1) Subparagraph 186.1(*b*)(vii) of the Act is replaced by the following:

(vii) a registered securities dealer that was throughout the year a member, or a participating organization, of a designated stock exchange in Canada.

(2) Subsection (1) applies after April 2, 2000, except that, in its application before the day on which this Act is assented to, the reference to "designated stock exchange" in subparagraph 186.1(*b*)(vii) of the Act, as amended by subsection (1), shall be read as a reference to "prescribed stock exchange".

46. Section 188.1 of the Act is amended by adding the following after subsection (3):

Penalty for excess corporate holdings

(3.1) A private foundation is liable to a penalty under this Part for a taxation year, in respect of a class of shares of the capital stock of a corporation, equal to

(*a*) 5% of the amount, if any, determined by multiplying the divestment obligation percentage of the private foundation for the taxation year in respect of the class by the total fair market value of all of the issued and outstanding shares of the class, except if the private foundation is liable for the taxation year under paragraph (*b*) for a penalty in respect of the class; or

(*b*) 10% of the amount, if any, determined by multiplying the divestment obligation percentage of the private foundation for the taxation year in respect of the class by the total fair market value of all of the issued and outstanding shares of the class, if

(i) the private foundation has failed to disclose, in its return required under subsection 149.1(14) for the taxation year,

(A) a material transaction, in the taxation year, of the private foundation in respect of the class,

(B) a material interest held at the end of the taxation year by a relevant person in respect of the private foundation, or

(C) the total corporate holdings percentage of the private foundation in respect of the class at the end of the taxation year, unless at no time in the taxation year the private foundation held greater than an insignificant interest in respect of the class, or

(ii) the Minister has, less than five years before the end of the taxation year, assessed a liability under paragraph (*a*) or this paragraph for a preceding taxation year of the private foundation in respect of any divestment obligation percentage.

Avoidance of divestiture

(3.2) If, at the end of a taxation year, a private foundation would — but for a transaction or series of transactions entered into by the private foundation or a relevant person in respect of the private foundation (in this subsection referred to as the "holder") a result of which is that the holder holds, directly or indirectly, an interest (or for civil law, a right), in a corporation other than shares — have a divestment obligation percentage for that taxation year in respect of the private foundation's holdings of a class of shares of the capital stock of the corporation, and it can reasonably be considered that a purpose of the transaction or series is to avoid that divestment obligation percentage by substituting shares of the class for that interest or right, for the purposes of applying this section, subsection 149.1(1) and section 149.2,

(*a*) each of those interests or rights is deemed to have been converted, immediately after the time it was first held, directly or indirectly by the holder, into that number of shares of that class that would, if those shares were shares of the class that were issued by the corporation, have a fair market value equal to the fair market value of the interest or right at that time;

(*b*) each such share is deemed to be a share that is issued by the corporation and outstanding and to continue to be held by the holder until such time as the holder no longer holds the interest or right; and

(*c*) each such share is deemed to have a fair market value, at any particular time, equal to the fair market value, at the particular time, of a share of the class issued by the corporation.

47. (1) Paragraph (*b*) of the definition "qualified investment" in section 204 of the Act is replaced by the following:

(*b*) bonds, debentures, notes, mortgages, hypothecary claims or similar obligations described in paragraph (*a*) of the definition "fully exempt interest" in subsection 212(3),

(2) Subparagraphs (*c*)(i) and (ii) of the definition "qualified investment" in section 204 of the Act are replaced by the following:

(i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,

(ii) a corporation the shares of which are listed on a designated stock exchange outside Canada, or

(3) Paragraph (*d*) of the definition “qualified investment” in section 204 of the Act is replaced by the following:

(*d*) securities (other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange,

(4) Subsection (1) applies on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm’s length.

(5) Subsections (2) and (3) apply on and after the day on which this Act is assented to.

48. (1) Subparagraph 212(1)(*b*)(vii) of the Act is amended by striking out the word “or” at the end of clause (E), by adding the word “or” at the end of clause (F) and by adding the following after clause (F):

(G) in the event that a change to this Act or to a tax treaty has the effect of relieving the non-resident person from liability for tax under this Part in respect of the interest;

(2) Paragraph 212(1)(*b*) of the Act is replaced by the following:

(*b*) interest that

(i) is not fully exempt interest, and is paid or payable to a person with whom the payer is not dealing at arm’s length, or

(ii) is participating debt interest;

(3) Subsection 212(3) of the Act is replaced by the following:

Interest — definitions

(3) The following definitions apply for the purpose of paragraph (1)(*b*).

“fully exempt interest” « *intérêts entièrement exonérés* »

“fully exempt interest” means

(*a*) interest that is paid or payable on a bond, debenture, note, mortgage, hypothecary claim or similar obligation

(i) of, or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada,

(ii) of the government of a province,

(iii) of an agent of a province,

(iv) of a municipality in Canada or a municipal or public body performing a function of government in Canada,

(v) of a corporation, commission or association to which any of paragraphs 149(1)(*d*) to (*d.6*) applies, or

(vi) of an educational institution or a hospital if repayment of the principal amount of the obligation and payment of the interest is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province;

(*b*) interest that is paid or payable on a mortgage, hypothecary claim or similar obligation secured by, or on an agreement for sale or similar obligation with respect to, real property situated outside Canada or an interest in any such real property, or to immovables situated outside Canada or a real right in any such immovable, except to the extent that the interest payable on the obligation is deductible in computing the income of the payer under Part I from a business carried on by the payer in Canada or from property other than real or immovable property situated outside Canada;

(*c*) interest that is paid or payable to a prescribed international organization or agency; or

(*d*) an amount paid or payable or credited under a securities lending arrangement that is deemed by subparagraph 260(8)(*c*)(i) to be a payment made by a borrower to a lender of interest, if

(i) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada, and

(ii) the security that is transferred or lent to the borrower under the securities lending arrangement is described in paragraph (*b*) or (*c*) of the definition "qualified security" in subsection 260(1) and issued by a non-resident issuer.

"participating debt interest" « *intérêts sur des créances participatives* »

"participating debt interest" means interest (other than interest described in any of paragraphs (*b*) to (*d*) of the definition "fully exempt interest") that is paid or payable on an obligation, other than a prescribed obligation, all or any portion of which interest is contingent or dependent on the use of or production from property in Canada or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation.

(4) Subsection 212(14) of the Act is repealed.

(5) Section 212 of the Act is amended by adding the following after subsection (17):

Payments to the International Olympic Committee and the International Paralympic Committee

(17.1) Notwithstanding subsection (1) and (2), (*a*) the International Olympic Committee is not taxable under this Part on any amount paid or credited to it, after 2005 and before 2011, in respect of the 2010 Olympic Winter Games, and

(*b*) the International Paralympic Committee is not taxable under this Part on any amount paid or credited to it, after 2005 and before 2011, in respect of the 2010 Paralympic Winter Games.

(6) Subsections 212(18) and (19) of the Act are replaced by the following:

Undertaking

(18) Every person who in a taxation year is a prescribed financial institution or a person resident in Canada who is a registered securities dealer shall on demand from the Minister, served personally or by registered letter, file within such reasonable time as may be stipulated in the demand, an undertaking in prescribed form relating to the avoidance of payment of tax under this Part.

Tax on registered securities dealers

(19) Every taxpayer who is a registered securities dealer resident in Canada shall pay a tax under this Part equal to the amount determined by the formula

$$1/365 \times .25 \times (A - B) \times C$$

where

A is the total of all amounts each of which is the amount of money provided before the end of a day to the taxpayer (and not returned or repaid before the end of the day) by or on behalf of a non-resident person as collateral or as consideration for a security that was lent or transferred under a designated securities lending arrangement,

B is the total of

(*a*) all amounts each of which is the amount of money provided before the end of the day by or on behalf of the taxpayer (and not returned or repaid before the end of the day) to a non-resident person as collateral or as consideration for a security that is described in paragraph (*a*) of the definition "fully exempt interest" in subsection (3), or that is an obligation of the government of any country, province, state, municipality or other political subdivision, and that was lent or transferred under a securities lending arrangement, and

(*b*) the greater of

(i) 10 times the greatest amount determined, under the laws of the province or provinces in which the taxpayer is a registered securities dealer, to be the capital employed by the taxpayer at the end of the day, and

(ii) 20 times the greatest amount of capital required, under the laws of the province or provinces in which the taxpayer is a registered securities dealer, to be maintained by the taxpayer as a margin in respect of securities described in paragraph (*a*) of the definition "fully exempt interest" in subsection (3), or that is an obligation of the government of any country, province, state, municipality or other political subdivision, at the end of the day, and

C is the prescribed rate of interest in effect for the day,

and shall remit that amount to the Receiver General on or before the 15th day of the month after the month in which the day occurs.

Designated SLA

(20) For the purpose of subsection (19), a designated securities lending arrangement is a securities lending arrangement

(*a*) under which

(i) the lender is a prescribed financial institution or a registered securities dealer resident in Canada,

(ii) the particular security lent or transferred is an obligation described in paragraph (*a*) of the definition "fully exempt interest" in subsection (3) or an obligation of the government of any country, province, state, municipality or other political subdivision,

(iii) the amount of money provided to the lender at any time during the term of the arrangement either as collateral or as consideration for the particular security does not exceed 110% of the fair market value at that time of the particular security; and

(*b*) that was neither intended, nor made as a part of a series of securities lending arrangements, loans or other transactions that was intended, to be in effect for more than 270 days.

(7) Subsection (1) applies to obligations entered into on or after March 19, 2007.

(8) Subsections (2) to (4) and (6) apply on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

49. (1) Paragraph 214(8)(*a*) of the Act is replaced by the following:

(*a*) that is described in paragraph (*a*) of the definition "fully exempt interest" in subsection 212(3), or on which the interest would have been exempt under subparagraph 212(1)(*b*)(iii) or (vii) as they applied to the 2007 taxation year;

(2) Subsection 214(11) of the Act is repealed.

(3) Subsections (1) and (2) apply on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

50. (1) Section 220 of the Act is amended by adding the following after subsection (3.2):

Joint election: pension income split

(3.201) On application by a taxpayer, the Minister may extend the time for making an election, or grant permission to amend or revoke an election, under section 60.03 if

(*a*) the application is made on or before the day that is three calendar years after the taxpayer's filing-due date for the taxation year to which the election applies; and (*b*) the taxpayer is resident in Canada

(i) if the taxpayer is deceased at the time of the application, at the time that is immediately before the taxpayer's death, or

(ii) in any other case, at the time of the application.

(2) The portion of subsection 220(3.5) of the Act before paragraph (*a*) is replaced by the following:

Penalty for late filed, amended or revoked elections

(3.5) Where, on application by a taxpayer or a partnership, the Minister extends the time for making an election or grants permission to amend or revoke an election (other than an extension or permission under subsection (3.201)), the taxpayer or the partnership, as the case may be, is liable to a penalty equal to the lesser of

(3) Subsections (1) and (2) applies to the 2007 and subsequent taxation years.

51. Subsection 241(4) of the Act is amended by striking out the word "or" at the end of paragraph (*o*), by adding the word "or" at the end of paragraph (*p*) and by adding the following after paragraph (*p*):

(*q*) provide taxpayer information to an official of the government of a province solely for the use in the management or administration by that government of a program relating to earning supplementation or income support.

52. (1) Subsection 248(1) of the Act is amended by adding the following definitions in alphabetical order:

"designated stock exchange" *« bourse de valeurs désignée »*

"designated stock exchange" means a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under section 262 is in effect;

"functional currency" *« monnaie fonctionnelle »*

"functional currency" of a taxpayer for a particular taxation year has the meaning assigned by section 261;

"recognized stock exchange" *« bourse de valeurs reconnue »*

"recognized stock exchange" means

(*a*) a designated stock exchange, and

(*b*) any other stock exchange, if that other stock exchange is located in Canada or in a country that is a member of the Organisation for Economic Co-operation and Development and that has a tax treaty with Canada;

(2) Subsection 248(29) of the Act is repealed.

(3) The definitions "designated stock exchange " and "recognized stock exchange" in subsection 248(1) of the Act, as enacted by subsection (1), and subsection (2) apply on and after the day on which this Act is assented to.

(4) The definition "functional currency" in subsection 248(1) of the Act, as enacted by subsection (1), applies in respect of taxation years that begin on or after the day on which this Act is assented to.

53. (1) The definitions "qualified security" and "qualified trust unit" in subsection 260(1) of the Act are amended by replacing each reference to "prescribed stock exchange" in those definitions with a reference to "stock exchange".

(2) Clauses 260(8)(*c*)(ii)(A) and (B) of the Act are replaced by the following:

(A) to have been payable by the issuer of the security, and

(B) if the security is described in paragraph (*c*) of the definition "qualified security" in subsection (1), to be a security described in paragraph (*a*) of the definition "fully exempt interest" in subsection 212(3); and

(3) Subsection (1) applies on and after the day on which this Act is assented to.

(4) Subsection (2) applies on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

54. (1) The Act is amended by adding the following after section 260:

Definitions

261. (1) The definitions in this subsection apply in this section.

"Canadian currency year" *« année de déclaration en monnaie canadienne »*

"Canadian currency year" of a taxpayer means a taxation year of the taxpayer in respect of which subsection (4) did not apply to the taxpayer.

"Canadian tax results" *« résultats fiscaux canadiens »*

"Canadian tax results" of a taxpayer for a particular taxation year of the taxpayer means

(*a*) the amount of the income of the taxpayer for the particular taxation year;

(*b*) the amount of the taxable income of the taxpayer for the particular taxation year;

(*c*) the amount (other than an amount payable on behalf of another person under subsection 153(1) or section 215) of tax or other amount payable under this Act by the taxpayer in respect of the particular taxation year;

(*d*) the amount (other than an amount refundable on behalf of another person in respect of amounts payable on behalf of that person under subsection 153(1) or section 215) of tax or other amount refundable under this Act to the taxpayer in respect of the particular taxation year; and (*e*) any amount that is relevant in determining the amounts described in respect of the taxpayer under paragraphs (*a*) to (*d*).

"consolidated financial statements" *« états financiers consolidés »*

"consolidated financial statements" of a taxpayer for a taxation year means the financial statements of the taxpayer that are prepared in accordance with generally accepted accounting principles that are applicable to that taxation year.

"currency exchange rate" *« taux de change monétaire »*

"currency exchange rate"on a particular day means, in respect of a conversion of an amount determined in a particular currency into an amount determined in another currency, the average, for the 12 month period ending on the particular day,

(*a*) where the particular currency is Canadian currency, of the rate of exchange (calculated by reference to the rate of exchange quoted by the Bank of Canada at noon on each business day in the period) for the exchange of the Canadian dollar for a unit of the other currency or such rate or rates of exchange acceptable to the Minister;

(*b*) where the other currency is Canadian currency, of the rate of exchange (calculated by reference to the rate of exchange quoted by the Bank of Canada at noon on each business day in the period) for the exchange of a unit of the particular currency for the Canadian dollar or such rate or rates of exchange acceptable to the Minister; or

(*c*) where neither the particular currency nor the other currency is Canadian currency, of the rate of exchange (calculated by reference to the rates of exchange quoted by the Bank of Canada at noon on each business day in the period for the exchange of the Canadian dollar for a unit of each of those currencies) for the exchange of a unit of the particular currency for a unit of the other currency or such rate or rates of exchange acceptable to the Minister.

"functional currency" *« monnaie fonctionnelle »*

"functional currency" of a taxpayer for a particular taxation year of the taxpayer means the currency of a country other than Canada if that currency is

(*a*) a qualifying currency;

(*b*) the currency that is, more often than any other currency, used in the conduct of the taxpayer's principal business activities in the particular taxation year; and

(*c*) the currency in which the financial results of the taxpayer for the particular taxation year are computed in the taxpayer's consolidated financial statements and legal-entity financial statements for the particular taxation year.

"functional currency year" *« année de déeclaration en monnaie fonctionnelle »*

"functional currency year" of a taxpayer means a taxation year of the taxpayer in respect of which subsection (4) applies to the taxpayer.

"generally accepted accounting principles"
« principes comptables généralement reconnus »

"generally accepted accounting principles" means the accounting principles established or recommended by the Accounting Standards Board of Canada or such other accounting principles as are determined to be acceptable by the Minister.

"initial functional currency year"
« année initiale de déclaration en monnaie fonctionnelle »

"initial functional currency year" of a taxpayer means a functional currency year of the taxpayer if the particular taxation year of the taxpayer ending immediately before the beginning of that functional currency year of the taxpayer was a Canadian currency year of the taxpayer.

"initial reversionary year"
« année initiale de déclaration en monnaie canadienne »

"initial reversionary year" of a taxpayer means the first taxation year of the taxpayer that begins immediately after the last functional currency year of the taxpayer.

"last Canadian currency year"
« dernière année de déclaration en monnaie canadienne »

"last Canadian currency year" of a taxpayer means the last taxation year of the taxpayer that ends before the beginning of the initial functional currency year of the taxpayer.

"last functional currency year"
« dernière année de déclaration en monnaie fonctionelle »

"last functional currency year" of a taxpayer means a functional currency year of the taxpayer if the particular taxation year of the taxpayer beginning immediately after the end of that functional currency year is a Canadian currency year of the taxpayer.

"legal-entity financial statements"
« états financiers individuels »

"legal-entity financial statements" of a taxpayer for a taxation year means the financial statements of the taxpayer that would be prepared for that taxation year in accordance with generally accepted accounting principles that are applicable to that taxation year if those generally accepted accounting principles did not require consolidation.

"qualifying currency"
« monnaie admissible »

"qualifying currency" of a taxpayer for a taxation year means each of

(*a*) the currency of the United States of America;

(*b*) the currency of the European Monetary Union;

(*c*) the currency of the United Kingdom; and

(*d*) a prescribed currency.

"reversionary exchange rate"
« taux de change canadien »

"reversionary exchange rate" of a taxpayer for a functional currency year of the taxpayer means the average, for the 12 month period ending on the last day of the functional currency year of the taxpayer, of the rate of exchange (quoted by the Bank of Canada at noon on each business day in the period) for the exchange of a unit of the functional currency of the taxpayer for the functional currency year for the Canadian dollar.

"tax credit"
« crédit d'impôt »

"tax credit" means an amount deductible in computing a taxpayer's tax payable, or deemed to have been paid on account of a taxpayer's tax payable, under any Part of this Act for a taxation year.

"transitional exchange rate"
« taux de change transitoire »

"transitional exchange rate" of a taxpayer means the average, for the 12 month period ending on the last day of the last Canadian currency year of the taxpayer, of the rate of exchange (calculated by reference to the rate of exchange quoted by the Bank of Canada at noon on each business day in the period) for the exchange of the Canadian dollar for a unit of the functional currency of the taxpayer for the initial functional currency year of the taxpayer.

Canadian currency requirement

(2) Subject to subsections (3) to (10),

(*a*) the Canadian tax results of a taxpayer for a particular taxation year are to be determined using Canadian currency; and

(*b*) subject to subsection 79(7), paragraphs 80(2)(*k*) and 142.7(8)(*b*), if a particular amount that is relevant in computing the taxpayer's Canadian tax results for the particular taxation year is an amount expressed in a currency other than Canadian currency, that amount is to be converted to an amount expressed in Canadian currency using the rate of exchange quoted by the Bank of Canada at noon on the day in which that amount first arose for the exchange of a unit of that other currency for a unit of Canadian currency or such other rate of exchange as is acceptable to the Minister.

Application of subsection (4)

(3) Subsection (4) applies to a taxpayer in respect of a particular taxation year of the taxpayer if

(*a*) the taxpayer is, throughout the particular taxation year, a corporation (other than an investment corporation, a mortgage investment corporation or a mutual fund corporation) resident in Canada;

(*b*) the taxpayer has elected that subsection (4) apply to the taxpayer in respect of the particular taxation year, or a preceding taxation year, and each subsequent taxation year of the taxpayer and has filed that election with the Minister in prescribed form and manner on or before the taxpayer's filing due date

(i) for the taxation year immediately preceding the first taxation year in respect of which the election was made, or

(ii) where there was not a taxation year immediately preceding the first taxation year in respect of which the election was made, for the first taxation year in respect of which the election was made;

(*c*) there is a functional currency of the taxpayer for the particular taxation year;

(*d*) where the taxpayer's taxation year immediately preceding the particular taxation year was a functional currency year of the taxpayer, the functional currency of the taxpayer for that preceding taxation year is the same as the functional currency of the taxpayer for the particular taxation year; and

(*e*) where the taxpayer's taxation year immediately preceding the particular taxation year was a Canadian currency year of the taxpayer, no preceding taxation year of the taxpayer was a functional currency year of the taxpayer.

Functional currency reporting

(4) If, because of subsection (3), this subsection applies to a taxpayer for a particular taxation year of the taxpayer,

(*a*) the taxpayer's Canadian tax results for the particular taxation year are to be determined using the taxpayer's functional currency for the particular taxation year;

(*b*) each reference in the Act or the regulations to a particular amount expressed in Canadian dollars is to be read as a reference to a particular amount expressed in the taxpayer's functional currency for the particular taxation year determined by applying the currency exchange rate in respect of the conversion of Canadian currency into that functional currency as of the first day of the particular taxation year;

(*c*) subject to subsection 79(7), paragraphs 80(2)(*k*) and 142.7(8)(*b*), if a particular amount that is relevant in computing the taxpayer's Canadian tax results for the particular taxation year is an amount expressed in a currency other than the taxpayer's functional currency for the particular taxation year, that amount is to be converted to an amount expressed in the taxpayer's functional currency for the particular taxation year by using the rates of exchange quoted by the Bank of Canada at noon on the day that the particular amount came into existence for the exchange of the Canadian dollar for a unit of each of those currencies or such other rate of exchange as is acceptable to the Minister;

(*d*) each reference in subsection 79(7), paragraph 80(2)(*k*) and subsections 80.01(11) and 80.1(8) to "Canadian currency" is to be read as a reference to "the taxpayer's "functional currency"";

(*e*) the reference in subsection 39(2) to "the value of the currency or currencies of one or more countries other than Canada relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year" is to be read as reference to "the value of the currency or currencies of one or more countries (other than the taxpayer's "functional currency" for the taxation year) relative to a taxpayer's "functional currency" for a taxation year, the taxpayer has made a gain or sustained a loss in the taxation year" and the references in that subsection to "currency of a country other than Canada" shall be read as references to "currency other than the taxpayer's " functional currency" for the taxation year";

(*f*) the definition "foreign currency" in subsection 248(1) is, in respect of the taxpayer, to be, at any time in the particular taxation year, read as:

"functional currency" in respect of a taxpayer, at any time in a particular taxation year, means a currency other than the taxpayer's functional currency for the particular taxation year;

(*g*) where a taxation year of a foreign affiliate of the taxpayer ends in the particular taxation year of the taxpayer, the references in section 95 and the references in regulations made for the purposes of that section to "Canadian currency" shall be read, in respect of the foreign affiliate, as a reference to "the taxpayer's "functional currency" for the particular taxation year ".

Converting Canadian currency amounts

(5) In applying this Act to a taxpayer for a particular functional currency year of the taxpayer

(*a*) subject to subparagraph (10)(*b*)(iii), in determining the amount (expressed in the taxpayer's functional currency for the particular functional currency year) that may be deducted, or relevant in determining the amount that may be deducted, under subsection 37(1) or 66(4), section 110.1 or 111 or subsection 126(2), 127(5), 129(1), 181.1(4) or 190.1(3) in the particular functional currency year, each amount (determined in Canadian currency) that is relevant to the determination and that was determined for a taxation year of the taxpayer that preceded the initial functional currency year of the taxpayer, is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*b*) in determining, at any time in the particular functional currency year, the cost (expressed in the taxpayer's functional currency for the particular functional currency year) to the taxpayer of a property that was acquired by the taxpayer before the beginning of the taxpayer's initial functional currency year, the cost (determined in Canadian currency) to the taxpayer of the property at the end of the last Canadian currency year of the taxpayer is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*c*) in determining, at any time in the particular functional currency year, the adjusted cost base (expressed in the taxpayer's functional currency for the particular functional currency year) to the taxpayer of a capital property that was acquired by the taxpayer before the beginning of the taxpayer's initial functional currency year, each amount (determined in Canadian currency) that was required by section 53 to be added or deducted in computing, at any time before the beginning of the initial functional currency year of the taxpayer, the adjusted cost base of the property to the taxpayer is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*d*) in determining, at any time in the particular functional currency year, the amount (expressed in the taxpayer's functional currency for the particular functional currency year) of the taxpayer's undepreciated capital cost of depreciable property of a prescribed class, cumulative eligible capital in respect of a business, cumulative Canadian exploration expense (within the meaning assigned by subsection 66.1(6)), cumulative Canadian development expense (within the meaning assigned by subsection 66.2(5)), cumulative foreign resource expense in respect of a country other than Canada (within the meaning assigned by subsection 66.21(1)) and cumulative Canadian oil and gas property expense (within the meaning assigned by subsection 66.4(5)), (each of which is referred to in this paragraph as a "pool amount") each amount (determined in Canadian currency) that was added to or deducted from a particular pool amount of the taxpayer in respect of a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*e*) in determining any amount (expressed in the taxpayer's functional currency for the particular functional currency year) that has been deducted or claimed as a reserve in computing the income of the taxpayer for its last Canadian currency year, that amount (determined in Canadian currency) deducted or claimed as a reserve is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*f*) in determining the amount (expressed in the taxpayer's functional currency for the particular functional currency year) of any outlay or expense referred to in subsection 18(9) that was made or incurred by the taxpayer and the amount that was deducted in respect of that outlay or expense in respect of a taxation year preceding the initial functional currency year of the taxpayer, such amounts of outlay or expense or deductions (determined in Canadian currency for those years) are to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*g*) in determining, at any time in the particular functional currency year, the amount (expressed in the taxpayer's functional currency for the particular functional currency year) of the taxpayer's paid-up capital in respect of any class of shares of its capital stock, any amount (determined in Canadian currency) added or deducted in computing the taxpayer's paid-up capital in respect of the class in a taxation year preceding the initial functional currency year of the taxpayer is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer;

(*h*) where the taxpayer issued a debt obligation in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer, in determining the amount (expressed in the taxpayer's functional currency for the particular functional currency year) for which the obligation was issued, the principal amount (expressed in the taxpayer's functional currency for the particular functional currency year) of the obligation, any amount (expressed in the taxpayer's functional currency for the particular functional currency year) paid in satisfaction of the principal amount of the obligation in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer, and the amount (determined in the taxpayer's functional currency for the particular functional currency year) of any gain or loss attributable to the fluctuation in the values of currencies,

(i) where the obligation was issued in the taxpayer's functional currency for the particular functional currency year, the amount (determined in the taxpayer's functional currency for the particular functional currency year) for which the obligation was issued, the principal amount (determined in the taxpayer's functional currency for the particular functional currency year) of the obligation and the amounts (determined in the taxpayer's functional currency for the particular functional currency year) paid in satisfaction of the principal amount of the obligation, in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer are those amounts determined in those years in the taxpayer's functional currency for the particular functional currency year,

(ii) where the obligation was issued in Canadian currency, the amount for which the obligation was issued (determined in Canadian currency), the principal amount (determined in Canadian currency) of the obligation and the amounts (determined in Canadian currency) paid in satisfaction of the principal amount of the obligation, in a taxation year preceding the initial functional currency year are to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer, and

(iii) where the obligation was issued in a currency (referred to in this subparagraph as the "third currency") other than Canadian currency or the taxpayer's functional currency for the particular functional currency year, the amount (determined in the third currency) for which the obligation was issued, the principal amount (determined in the third currency) of the obligation and the amounts (determined in the third currency) paid in satisfaction of the principal amount of the obligation in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer, are to be converted to the taxpayer's functional currency for the particular functional currency year using the currency exchange rate in respect of a conversion of an amount determined in the third currency into an amount determined in the taxpayer's functional currency for the particular functional currency year on the last day of the last Canadian currency year of the taxpayer;

(*i*) in determining the amount (expressed in the taxpayer's functional currency for the particular functional currency year) of tax payable under Part I for a Canadian currency year for the purpose of determining the taxpayer's first instalment base or second instalment base for the taxpayer's initial functional currency year, the amount (determined in Canadian currency) of tax payable is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer; and

(*j*) any amount (expressed in Canadian currency), other than an amount referred to in paragraphs (*a*) to (*i*), determined under the provisions of this Act in or in respect of a taxation year preceding the initial functional currency year of the taxpayer that is relevant in determining the Canadian tax results (expressed in the taxpayer's functional currency for the particular functional currency year) of the taxpayer for the particular functional currency year is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer.

Deferred amounts relating to debt

(6) In applying this Act to a taxpayer for a particular functional currency year of the taxpayer

(*a*) where, at any time in the particular functional currency year, the taxpayer has made a particular payment (expressed in the taxpayer's functional currency for the particular functional currency year) on account of the principal amount (expressed in the taxpayer's functional currency for the particular functional currency year) of a debt obligation that was issued by the taxpayer in a Canadian currency year of the taxpayer that ended before the beginning of the initial functional currency year of the taxpayer

(i) the taxpayer is deemed to have a capital gain under paragraph 39(2)(*a*) or income, as the case may be, attributable to the fluctuation in the values of currencies in respect of the particular payment for the particular functional currency year equal to the amount determined by the formula

$$A \times B/C$$

where

A is the amount determined by the formula

$$D \times E$$

where

D is the amount (expressed in Canadian currency), if any, that would have been determined to be the taxpayer's capital gain under paragraph 39(2)(*a*) or income, as the case may be, if the principal amount of the debt obligation outstanding (determined in Canadian currency), immediately before the end of the last Canadian currency year of the taxpayer, had been settled by a payment by the taxpayer to the holder of the obligation of an amount equal to that outstanding principal amount at that time, and

E is the transitional exchange rate of the taxpayer,

B is the amount of the particular payment (expressed in the taxpayer's functional currency for the particular functional currency year), and

C is the principal amount of the debt obligation outstanding (determined in the taxpayer's functional currency for the particular functional currency year) at the beginning of the initial functional currency year of the taxpayer,

(ii) the taxpayer is deemed to have a capital loss under paragraph 39(2)(*b*) or a loss, as the case may be, attributable to the fluctuation in the values of currencies in respect of the particular payment for the particular functional currency year equal to the amount determined by the formula

$$F \times G/H$$

where

F is the amount determined by the formula

$$I \times J$$

where

I is the amount (expressed in Canadian currency), if any, that would have been determined to be the taxpayer's capital loss under paragraph 39(2)(*b*) or loss, as the case may be, if the principal amount of the debt obligation outstanding (determined in Canadian currency), immediately before the end of the last Canadian currency year of the taxpayer, had been settled by a payment by the taxpayer to the holder of the obligation of an amount equal to that outstanding principal amount at that time, and

J is the transitional exchange rate of the taxpayer,

G is the amount of the particular payment (expressed in the taxpayer's functional currency for the particular functional currency year), and

H is the principal amount of the debt obligation outstanding (determined in the taxpayer's functional currency for the particular functional currency year) at the beginning of the initial functional currency year of the taxpayer, and

(iii) where a debt obligation is denominated in a currency other than the taxpayer's functional currency for the particular functional currency year, any amount determined under element B in the formula in subparagraph (i) or element G in the formula in subparagraph (ii) is to be determined with reference to the relative value of that currency and the taxpayer's functional currency for the particular functional currency year at the beginning of the initial functional currency year of the taxpayer, and

(*b*) notwithstanding paragraph 80(2)(*k*), where an obligation of the taxpayer was issued in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer in a currency other than the taxpayer's functional currency for the particular functional currency year, a forgiven amount arising at any time in the particular functional currency year in respect of the obligation is to be determined by reference to the currency exchange rate on the last day of the taxpayer's last Canadian currency year in respect of a conversion of an amount determined in the other currency into an amount determined in the taxpayer's functional currency for the particular functional currency year.

Amounts payable or refundable in respect of a functional currency year

(7) Notwithstanding subsection (4),

(*a*) if, at any particular time, an amount (determined in the taxpayer's functional currency for the particular functional currency year) first becomes payable under this Act by a taxpayer to the Receiver General in respect of a particular functional currency year of the taxpayer,

(i) that amount (determined in the taxpayer's functional currency for the particular functional currency year) is to be converted to Canadian currency using the currency exchange rate on the earlier of the day the amount is so paid and the day that includes the particular time in respect of a conversion of an amount determined in the taxpayer's functional currency for the particular functional currency year into an amount determined in Canadian currency, and

(ii) the amount so determined in Canadian currency under subparagraph (i) is to be paid to the Receiver General in Canadian currency, and

(*b*) if, at any particular time, an amount (determined in a taxpayer's functional currency for the particular functional currency year) first becomes payable under this Act to the taxpayer by the Minister, for a particular functional currency year of the taxpayer, or is deemed to be paid on account of an amount payable by the taxpayer under the Act for that particular functional currency year,

(i) that amount (determined in the taxpayer's functional currency for the particular functional currency year) is to be converted to Canadian currency using the currency exchange rate on the day that includes the particular time in respect of the conversion of an amount determined in the taxpayer's functional currency for the particular functional currency year into an amount determined in Canadian currency, and

(ii) the amount so determined in Canadian currency under subparagraph (i) is to be paid to the taxpayer by the Minister or is deemed to have been paid to the taxpayer by the Minister, as the case may be, in Canadian currency.

Application of subsection (9)

(8) Subsection (9) applies to a taxpayer for a particular Canadian currency year that begins after the last functional currency year of the taxpayer.

Converting functional currency amounts

(9) Where, because of subsection (8), this subsection applies to a taxpayer for a particular Canadian currency year of the taxpayer, in applying this Act to the taxpayer for that particular Canadian currency year, the following rules apply:

(*a*) subject to subparagraph (10)(*a*)(iii), in determining the amount (expressed in Canadian currency) that may be deducted, or relevant in determining the amount that may be deducted, under subsection 37(1) or 66(4), section 110.1 or 111 or subsection 126(2), 127(5), 129(1), 181.1(4) or 190.1(3) in the particular Canadian currency year,

(i) each amount (determined in the taxpayer's functional currency for the functional currency year of the taxpayer) that is relevant to the determination and that was first required to be determined in a functional currency year of the taxpayer that preceded the particular Canadian currency year, is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) each amount (determined in Canadian currency) that is relevant to the determination and that was first required to be determined in a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year,

(*b*) in determining, at any time in the particular Canadian currency year, the cost (expressed in Canadian currency) to the taxpayer of a property,

(i) where the property was acquired by the taxpayer in a functional currency year of the taxpayer preceding the particular Canadian currency year, the cost (determined in the taxpayer's functional currency for the functional currency year) to the taxpayer of the property is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) where the property was acquired by the taxpayer in a Canadian currency year of the taxpayer preceding the particular Canadian currency year, the cost (determined in Canadian currency) to the taxpayer of the property is the cost so determined in Canadian currency in that Canadian currency year,

(*c*) in determining, at any time in the particular Canadian currency year, the adjusted cost base (expressed in Canadian currency) to the taxpayer of a capital property

(i) each amount (determined in the taxpayer's functional currency for the functional currency year) that is required by section 53 to be added or deducted in computing the adjusted cost base of the property to the taxpayer and was first required by that section to be added or deducted at any time in a functional currency year of the taxpayer preceding the particular Canadian currency year is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) each amount (determined in Canadian currency) that is required by section 53 to be added or deducted in computing the adjusted cost base of the property to the taxpayer and was first required by that section to be added or deducted at any time in a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year,

(*d*) in determining, at any time in the particular Canadian currency year, the amount (expressed in Canadian currency) of the taxpayer's undepreciated capital cost of depreciable property of a prescribed class, cumulative eligible capital in respect of a business, cumulative Canadian exploration expense (within the meaning assigned by subsection 66.1(6)), cumulative Canadian development expense (within the meaning assigned by subsection 66.2(5)), cumulative foreign resource expense in respect of a country other than Canada (within the meaning assigned by subsection 66.21(1)) and cumulative Canadian oil and gas property expense (within the meaning assigned by subsection 66.4(5)), (each of which is referred to in this paragraph as a "pool amount"),

(i) each amount (determined in the taxpayer's functional currency for the functional currency year) that is required to be added to or deducted from a particular pool amount of the taxpayer and was first required to be added or deducted in respect of a functional currency year of the taxpayer preceding the particular Canadian currency year is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) each amount (determined in Canadian currency) that is required to be added to or deducted from a particular pool amount of the taxpayer and was first required to be added or deducted in respect of a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year, (*e*) in determining any amount (expressed in Canadian currency) that has been deducted or claimed as a reserve in computing the income of the taxpayer for its last functional currency year preceding the particular Canadian currency year, that amount (determined in the taxpayer's functional currency for the last functional currency year) deducted or claimed as a reserve for that last functional currency year is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that last functional currency year;

(*f*) in determining the amount (expressed in Canadian currency) of any outlay or expense referred to in subsection 18(9) that was made or incurred by the taxpayer and the amount that was deducted by the taxpayer in respect of that outlay or expense in respect of a taxation year of the taxpayer preceding the particular Canadian currency year,

(i) such of those amounts (determined in the taxpayer's functional currency for the functional currency year) that were first made or incurred or deducted by the taxpayer in or in respect of a functional currency year of the taxpayer preceding the particular Canadian currency year are to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) such of those amounts (determined in Canadian currency) that were first made or incurred or deducted by the taxpayer in or in respect of a Canadian currency year of the taxpayer preceding the particular Canadian currency year are the amounts that were so determined in Canadian currency in that Canadian currency year;

(*g*) in determining, at any time in the particular Canadian currency year, the amount (expressed in Canadian currency) of the taxpayer's paid-up capital in respect of any class of shares of its capital stock,

(i) any amount (determined in the taxpayer's functional currency for the functional currency year) that was first added or deducted in computing the taxpayer's paid-up capital in respect of the class in a functional currency year of the taxpayer preceding the particular Canadian currency year is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) any amount (determined in Canadian currency) that was first added or deducted in computing the taxpayer's paid-up capital in respect of the class in a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year;

(*h*) where an obligation was issued in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer, in determining, at any time in the particular Canadian currency year, the amount (expressed in Canadian currency) for which an obligation was issued, the principal amount (expressed in Canadian currency) of the obligation, the amounts (expressed in Canadian currency) paid in satisfaction of the principal amount of the obligation, and the amount (determined in Canadian currency), if any, of any gain or loss attributable to the fluctuation in the value of the Canadian currency relative to the value of the currency in which the obligation was issued,

(i) subject to paragraph (*i*), where the obligation was issued in a currency other than Canadian currency,

(A) the amount (determined in the currency in which the obligation was issued) for which the obligation was issued and the principal amount (determined in the currency in which the obligation was issued) of the obligation are

(I) where the taxation year of the taxpayer in which the obligation was issued was a Canadian currency year of the taxpayer, the amounts (determined in Canadian currency) that were so determined in Canadian currency in that Canadian currency year , or

(II) where the taxation year of the taxpayer in which the obligation was issued was a functional currency year of the taxpayer, the amounts determined by converting those amounts (determined in the taxpayer's functional currency for the functional currency year) to Canadian currency by using the reversionary exchange rate of the taxpayer for that functional currency year, and

(B) the amounts (determined in the currency in which the obligation was issued) paid at any time in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer in satisfaction of the principal amount of the obligation are

(I) where the taxation year of the taxpayer in which an amount was paid was a Canadian currency year of the taxpayer, the amount (determined in Canadian currency) that was so determined in Canadian currency in that Canadian currency year, or

(II) where the taxation year of the taxpayer in which an amount was paid was a functional currency year of the taxpayer, the amount determined by converting that amount (determined in the taxpayer's functional currency for the functional currency year) to Canadian currency by using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) where the obligation was issued in Canadian currency, the amount (determined in Canadian currency) for which the obligation was issued, the principal amount (determined in Canadian currency) of the obligation and the amounts (determined in Canadian currency) paid, in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer, in satisfaction of the principal amount of the obligation, are the amounts so determined in Canadian currency in those preceding years,

(*i*) where an obligation was issued in a currency other than Canadian currency in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer, in determining, in respect of subsection 79(7) or paragraph 80(2)(*k*) or 142.7(8)(*b*), the amount (expressed in Canadian currency) for which the obligation was issued, the principal amount (determined in Canadian currency) of the obligation, and the amounts (determined in Canadian currency) paid in satisfaction of the principal amount of the obligation, at any time in the particular Canadian currency year, those amounts are to be determined as if subsections (1) to (7) had not applied to the taxpayer for any preceding taxation year, (*j*) where the particular Canadian currency year is the initial reversionary year of the taxpayer, for the purpose of determining the taxpayer's first instalment base or second instalment base in the particular Canadian currency year, the amount (determined in the taxpayer's functional currency for the functional currency year) of tax payable by the taxpayer under Part I for the last functional currency year of the taxpayer is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that last functional currency year, and

(*k*) in determining any amount (determined in Canadian currency and referred to in this paragraph as the "specified amount"), at any time in the particular Canadian currency year, other than an amount referred to in paragraphs (*a*) to (*j*), that is relevant in determining the Canadian tax results of the taxpayer for the particular Canadian currency year

(i) any amount (determined in the taxpayer's functional currency for the functional currency year) that is relevant in determining the specified amount and was first determined in or in respect of a functional currency year of the taxpayer preceding the particular Canadian currency year, is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and

(ii) any amount (determined in Canadian currency) that is relevant in determining the specified amount and was first determined in or in respect of a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year.

Functional currency and Canadian currency amounts carried back

(10) In determining an amount that a taxpayer may claim under section 111 or subsection 126(2), 127(5), 181.1(4) or 190.1(3), for a particular taxation year of the taxpayer, the following rules apply:

(*a*) if the particular taxation year is a Canadian currency year of the taxpayer, the amount that may be claimed (determined in Canadian currency) is to be determined,

(i) by converting each amount (determined in the taxpayer's functional currency for the particular functional currency year) of a loss incurred, tax credit arising and expenditure made in or in respect of a particular functional currency year of the taxpayer that ends after the particular taxation year to Canadian currency using the currency exchange rate in respect of the conversion of an amount determined in the taxpayer's functional currency for the particular functional currency year into an amount determined in Canadian currency on the last day of that particular functional currency year,

(ii) as if each amount (determined in Canadian currency) of a loss incurred, tax credit arising, expenditure made and deduction claimed in or in respect of a Canadian currency year of the taxpayer were the amount of that loss incurred, tax credit arising, expenditure made and deduction claimed in Canadian currency in or in respect of that Canadian currency year of the taxpayer, and

(iii) by converting each amount (determined in the taxpayer's functional currency for the particular functional currency year) claimed in or in respect of a particular functional currency year of the taxpayer preceding the initial reversionary year of the taxpayer (in respect of an amount of loss incurred, tax credit arising or expenditure made by a taxpayer in or in respect of a Canadian currency year) to Canadian currency using the currency exchange rate on the last day of the Canadian currency year of the taxpayer in or in respect of which the amount claimed arose in respect of the conversion of an amount determined in the taxpayer's functional currency for the particular functional currency year to an amount determined in Canadian currency; and

(*b*) if the particular taxation year is a functional currency year of the taxpayer, the amount that may be claimed (determined in the taxpayer's functional currency for the particular taxation year) is to be determined,

(i) by converting each amount (determined in Canadian currency) of a loss incurred, tax credit arising and expenditure made in or in respect of a particular Canadian currency year of the taxpayer that ends after the particular taxation year to the taxpayer's functional currency for the particular taxation year using the currency exchange rate in respect of the conversion of an amount determined in Canadian currency into an amount determined in the taxpayer's functional currency for the particular taxation year on the last day of that particular Canadian currency year,

(ii) as if each amount (determined in the taxpayer's functional currency for the particular taxation year) of a loss incurred, tax credit arising, expenditure made and deduction claimed in or in respect of a functional currency year of the taxpayer were the amount of that loss incurred, tax credit arising, expenditure made and deduction claimed in the taxpayer's functional currency for the particular taxation year, and

(iii) by converting each amount (determined in Canadian currency) claimed in or in respect of a particular Canadian currency year of the taxpayer preceding the initial functional currency year of the taxpayer (in respect of an amount of loss incurred, tax credit arising or expenditure made by a taxpayer in or in respect of a functional currency year of the taxpayer) to the taxpayer's functional currency for the particular taxation year using the currency exchange rate on the last day of the functional currency year of the taxpayer in or in respect of which the amount claimed arose in respect of the conversion of an amount determined in Canadian currency to an amount determined in the taxpayer's functional currency for the particular taxation year.

Subsection 88(1) wind-ups — effect on subsidiary

(11) Subsection (12) applies to a corporation (referred to in this subsection and subsection (12) as the "subsidiary") that has been wound up into another corporation (referred to in this subsection and subsection (12) as the "parent") if

(*a*) subsection 88(1) applied to the subsidiary and the parent in respect of the winding-up of the subsidiary,

(*b*) the taxation year of the subsidiary (referred to in this subsection and subsection (12) as the "distribution year of the subsidiary") in which any portion of a property (such portion of the property referred to in this subsection as the "distributed property") of the subsidiary was distributed to the parent, or any portion of an obligation (such portion of the obligation referred to in this subsection as the "assumed obligation") of the subsidiary was assumed by the parent, on the winding-up of the subsidiary would, were this section read without reference to this subsection, be a functional currency year of the subsidiary, and

(*c*) either

(i) where the taxation year of the parent (referred to in this paragraph and subsection (16) as the "acquisition year of the parent") in which the subsidiary distributed the distributed property to the parent, or the assumed obligation of the subsidiary was assumed by the parent, on the winding-up of the subsidiary was a functional currency year of the parent, the functional currency for the acquisition year of the parent was not the functional currency of the subsidiary for the distribution year of the subsidiary, or

(ii) the acquisition year of the parent was not a functional currency year of the parent.

Taxation year of subsidiary

(12) Where, because of subsection (11), this subsection applies to the subsidiary, for the purposes of this section

(*a*) the last taxation year of the subsidiary that ends before the beginning of the distribution year of the subsidiary is deemed to be the last functional currency year of the subsidiary; and

(*b*) subsection (4) is deemed not to apply to the subsidiary for each taxation year of the subsidiary commencing after the end of the last functional currency year of the subsidiary described in paragraph (*a*).

Amalgamations — effect on predecessor corporations

(13) Subsection (14) applies to a corporation (referred to in this subsection and subsection (14) as the "specified predecessor") that has merged with one or more other corporations to form one corporate entity (referred to in this subsection and subsection (14) as the "new corporation") if

(*a*) the merger was an amalgamation (within the meaning assigned by subsection 87(1));

(*b*) the taxation year of the specified predecessor (referred to in this subsection and subsection (14) as the "last taxation year of the specified predecessor") that ended immediately before the amalgamation would, were this section read without reference to subsection (14), be a functional currency year of the specified predecessor; and

(*c*) either

(i) where the taxation year of the new corporation (referred to in this paragraph as the "first taxation year of the new corporation") that began at the time of the amalgamation was a functional currency year of the new corporation, the functional currency of the new corporation for the first taxation year of the new corporation was not the functional currency of the specified predecessor for the last taxation year of the specified predecessor, or

(ii) the first taxation year of the new corporation was not a functional currency year of the new corporation.

Taxation year of specified predecessor

(14) Where, because of subsection (13), this subsection applies to the specified predecessor, for the purposes of this section

(*a*) the taxation year of the specified predecessor that ends immediately before the beginning of the last taxation year of the specified predecessor is deemed to be the last functional currency year of the specified predecessor, and

(*b*) subsection (4) is deemed not to apply to the specified predecessor corporation for each taxation year of the specified predecessor commencing after the end of the last functional currency year of the specified predecessor described in paragraph (*a*).

Deemed continuation on winding-up or amalgamation

(15) For the purpose of this section,

(*a*) subject to subsection (16), where there has been a winding-up of a taxpayer (referred to in this subsection and subsection (16) as the "subsidiary") into another taxpayer (referred to in this subsection and subsection (16) as the "parent") to which subsection 88(1) has applied, the parent is deemed to be the same corporation as and a continuation of the subsidiary, and

(*b*) subject to subsection (17), where there has been an amalgamation (within the meaning assigned by subsection 87(1)) of two or more corporations (each such taxpayer referred to in this subsection and subsection (17) as a "predecessor") to form one corporate entity (referred to in this subsection and subsection (17) as a the "new corporation ") the new corporation is deemed to be the same corporation as and a continuation of each such predecessor corporation.

Exception to deemed continuation — winding-up

(16) Where the parent would not, in a taxation year of the parent ending after the time the subsidiary was wound up, satisfy the requirements of paragraph (3)(*e*) because the last functional currency year of the subsidiary referred to in subsection (12) in respect of the winding-up is, because of paragraph (15)(*a*), the last functional currency year of the parent, paragraph (15)(*a*) shall not apply, for the purposes of paragraph (3)(*e*), to the parent in respect of the subsidiary if the total of all amounts each of which is the cost amount, at the end of the taxation year of the parent in which the property of the subsidiary was distributed to the parent in the course of winding-up, to the parent of a property that was distributed to the parent on the winding-up (or property substituted for such property) is less than 50% the total of all amounts each of which is the cost amount, at the end of that taxation year, to the parent of a property of the parent.

Exception to deemed continuation — amalgamation

(17) Where the new corporation would not, in a taxation year of the new corporation commencing on or after the time of the amalgamation, satisfy the requirements of paragraph (3)(*e*) because the last functional currency year of the predecessor referred to in subsection (14) in respect of the amalgamation is, because of paragraph (15)(*b*) the last functional currency year of the new corporation, paragraph (15)(*b*) shall not apply, for the purposes of paragraph (3)(*e*), to the new corporation in respect of the predecessor if the total of all amounts each of which is the cost amount, at the end of the taxation year of the new corpo-

ration that began at the time of the amalgamation, to the new corporation of a property that, immediately before the amalgamation, was a property of the predecessor (or property substituted for such property) is less than 50% the total of all amounts each of which is the cost amount, at the end of that taxation year of the new corporation, to the new corporation of a property of the new corporation.

Anti-avoidance

(18) Where, at any time, all or substantially all of the property (referred to in this subsection as the “transferred property”) of a business (referred to in this subsection as the “transferred business”) of a taxpayer has been disposed of by the taxpayer (referred to in this subsection as the “transferor”) and acquired, either directly or indirectly by a corporation resident in Canada (referred to in this subsection as the “transferee”) that, immediately after the acquisition, was related to the taxpayer, and a taxation year of the transferor beginning before that time was a functional currency year of the transferor, for the purposes of this section, the transferee is deemed to be the same corporation as and a continuation of the transferor if the total of all amounts each of which is the cost amount, at the end of the taxation year of the transferee in which the transferred business was transferred, to the transferee of a property that was a transferred property (or property substituted for such property) is greater than 50% the total of all amounts each of which is the cost amount, at the end of that taxation year of the transferree, to the transferree of a property of the transferree.

Authority to designate stock exchange

262. (1) The Minister of Finance may designate a stock exchange, or a part of a stock exchange, for the purposes of this Act.

Revocation of designation

(2) The Minister of Finance may revoke the designation of a stock exchange, or a part of a stock exchange, designated under subsection (1).

Timing

(3) A designation under subsection (1) or a revocation under subsection (2) shall specify the time at and after which it is in effect, which time may, for greater certainty, precede the time at which the designation or revocation is made.

Publication

(4) The Minister of Finance shall cause to be published, by posting on the Internet website of the Department of Finance or by any other means that the Minister considers appropriate, the names of those stock exchanges, or parts of stock exchanges, as the case may be, that are or at any time were designated under subsection (1).

Transition

(5) The Minister of Finance is deemed to have designated under subsection (1) each stock exchange and each part of a stock exchange that was, immediately before the day on which this section came into force, a prescribed stock exchange, with effect on and after that day.

(2) The definition “Canadian tax results” in subsection 261(1), and subsection 261(2), of the Act, as enacted by subsection (1), apply for all taxation years.

(3) Subsection 261(1) (other than the definition “Canadian tax results”), and subsections 261(3) to (18), of the Act, as enacted by subsection (1), apply in respect of taxation years that begin on or after the day on which this Act is assented to.

(4) Subsection 261(10) of the Act, as enacted by subsection (1), applies on and after the day on which this Act is assented to.

(5) Section 262 of the Act, as enacted by subsection (1), applies on and after the day on which this Act is assented to.

55. (1) The Act is amended by replacing references to "prescribed stock exchange" with references to "designated stock exchange" in the following provisions:

(*a*) subparagraphs 7(9)(*d*)(i) and (ii);

(*b*) subparagraph 13(27)(*f*)(i);

(*c*) subparagraph 48.1(1)(*a*)(ii);

(*d*) paragraphs (*b*) and (*c*) of the definition "qualified person" in subsection 55(1), and subsection 55(6);

(*e*) clause (*c*)(ii)(A) and subparagraph (*d*)(ii) of subsection 86.1(2);

(*f*) subsection 87(4.3) and paragraphs 87(9)(*a.2*) and (10)(*e*);

(*g*) the definitions "arm's length transfer" and "excluded property" in subsection 94(1);

(*h*) the definitions "arm's length interest" and "exempt interest" in subsection 94.1(1);

(*i*) the definitions "readily obtainable fair market value" and "trading day" in subsection 94.2(1);

(*j*) paragraph 94.2(2)(*b*);

(*k*) subsection 110.1(6);

(*l*) paragraph 112(2.21)(*c*);

(*m*) clauses (*a*)(i)(A) and (B) of the definition "qualified investment" in subsection 115.2(1);

(*n*) paragraph 118.1(18)(*a*);

(*o*) subparagraphs (*a*)(i) and (ii) and clauses (*c*)(ii)(A) and (B) of the definition "split income" in subsection 120.4(1);

(*p*) paragraph (*c*) of the definition "Canadian-controlled private corporation" in subsection 125(7);

(*q*) subsection 137(4.1);

(*r*) paragraph (*b*) of the definition "non-qualified investment" in subsection 149.1(1);

(*s*) the portion of paragraph 187.3(2)(*d*) before subparagraph (i);

(*t*) subsection 207.1(5);

(*u*) subsection 207.5(2);

(*v*) paragraph (*a*) of the definition "Canadian property mutual fund investment" in subsection 218.3(1);

(*w*) the portion of paragraph (*d*) before subparagraph (i) in the definition "grandfathered share" in subsection 248(1);

(*x*) paragraphs (*d*) to (*f*) of the definition "taxable Canadian property" in subsection 248(1); and

(*y*) paragraph (*d.1*) of the definition "term preferred share" in subsection 248(1);

(2) Subsection (1) applies on and after the day on which this Act is assented to.

INCOME TAX APPLICATION RULES

56. (1) Subsection 10(5) of the *Income Tax Application Rules* is repealed.

(2) Subsection (1) applies on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

INCOME TAX CONVENTIONS INTERPRETATION ACT

57. (1) The *Income Tax Conventions Interpretation Act* is amended by adding the following after section 4.1:

Stock exchanges

4.2 Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, each reference in a convention to a stock exchange that is prescribed under, or for the purposes of, the Income Tax Act shall be read as a reference to a designated stock exchange, as defined in the Income Tax Act

(2) Subsection (1) applies on and after the day on which this Act is assented to.

INCOME TAX REGULATIONS

58. (1) Paragraphs 108(1.12)(*a*) and (*b*) of the *Income Tax Regulations* are replaced by the following:

(*a*) the average monthly withholding amount in respect of an employer for either the first or the second calendar year before the particular calendar year that includes that time is less than $3,000,

(*b*) throughout the 12-month period before that time, the employer has remitted, on or before the day on or before which the amounts were required to be remitted, all amounts each of which was required to be remitted under subsection 153(1) of the Act, under subsection 21(1) of the *Canada Pension Plan*, under subsection 82(1) of the *Employment Insurance Act* or under Part IX of the *Excise Tax Act*, and

(2) Subsection (1) applies in respect of amounts required to be deducted or withheld after 2007.

59. (1) Section 3201 of the Regulations is amended

(*a*) by replacing the reference to "the Australian Stock Exchange" in paragraph (*a*) with a reference to "the Australian Securities Exchange";

(*b*) by replacing the reference to "the Brussels Stock Exchange" in paragraph (*b*) with a reference to "Euronext Brussels";

(*c*) by replacing the reference to "the Paris Stock Exchange" in paragraph (*c*) with a reference to "Euronext Paris";

(*d*) by replacing the reference to "the Amsterdam Stock Exchange" in paragraph (*i*) with a reference to "Euronext Amsterdam";

(*e*) by replacing the reference to "the Zurich Stock Exchange" in paragraph (*m*) with a reference to "the SWX Swiss Exchange";

(*f*) by replacing the reference to "the Cincinnati Stock Exchange" in subparagraph (*o*)(v) with a reference to "the National Stock Exchange";

(*g*) by repealing subparagraph (*o*)(vi);

(*h*) by replacing the reference to "the Midwest Stock Exchange" in subparagraph (*o*)(vii) with a reference to "the Chicago Stock Exchange";

(*i*) by replacing the reference to "the Pacific Stock Exchange" in subparagraph (*o*)(x) with a reference to "NYSE Arca"; and

(*j*) by replacing subparagraphs (*o*)(xi) and (xii) with the following:

(xi) the Philadelphia Stock Exchange;

(2) Sections 3200 and 3201 of the Regulations are repealed.

(3) Paragraphs (1)(*a*) to (*d*), (*f*) to (*h*) and (*j*) are deemed to have come into force on the day immediately before the day on which this Act is assented to.

(4) Paragraph (1)(*e*) is deemed to have come into force on January 1, 2007.

(5) Paragraph (1)(*i*) is deemed to have come into force on April 1, 2006.

(6) Subsection (2) comes into force on the day on which this Act is assented to.

60. (1) The definition "prescribed stock exchange" in section 3700 of the Regulations is repealed.

(2) Subsection (1) comes into force on the day on which this Act is assented to.

61. (1) Subparagraphs 3702(1)(*b*)(i) and (ii) of the Regulations are amended by replacing each reference to "prescribed stock exchange" in those subparagraphs with a reference to "designated stock exchange".

(2) Subsection (1) comes into force on the day on which this Act is assented to.

62. (1) Subparagraph 4800(2)(*a*)(i) and paragraph 4800(3)(*a*) of the Regulations are amended by replacing each reference to "stock exchange in Canada prescribed for the purposes of section 89 of the Act" in those provisions with a reference to "designated stock exchange in Canada".

(2) Subsection (1) comes into force on the day on which this Act is assented to.

63. (1) The portion of subsection 6201(5) of the Regulations before paragraph (*a*) is replaced by the following:

(5) For the purpose of paragraph (*f*) of the definition "term preferred share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a designated stock exchange in Canada is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share for the purpose of sale in the course of the business ordinarily carried on by it unless

(2) The portion of subsection 6201(5.1) of the Regulations before paragraph (*a*) is replaced by the following:

(5.1) For the purpose of the definition "taxable RFI share" in subsection 248(1) of the Act, a share of a class of the capital stock of a corporation that is listed on a designated stock exchange in Canada is a prescribed share at any particular time with respect to another corporation that is registered or licensed under the laws of a province to trade in securities and that holds the share for the purpose of sale in the course of the business ordinarily carried on by it unless

(3) Subsections (1) and (2) apply to dividends received in taxation years that begin after October 1994, except that in its application before the day on which this Act is assented to, the references to "a designated stock exchange in Canada" in subsections 6201(5) and (5.1) of the Regulations, as enacted by subsections (1) and (2), shall be read as a reference to "a stock exchange referred to in section 3200".

64. (1) Paragraph 7303.1(1)(*a*) of the Regulations is replaced by the following:

(*a*) the Yukon Territory, the Northwest Territories or the Nunavut;

(2) Paragraph 7303.1(2)(*a*) of the Regulations is amended by striking out the word "or" at the end of subparagraph (i), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) north of 55°13'N latitude and east of 123°16'W longitude;

(3) Subsection (1) applies after March 31, 1999.

(4) Subsection (2) applies for the 2007 and subsequent taxation years.

65. (1) The Regulations are amended by adding the following after section 7309:

7310. For the purpose of the definition "eligible apprentice" in subsection 127(9) of the Act, a prescribed trade in respect of a province means, at all times in a taxation year, a trade that is, at any time in that taxation year, a Red Seal trade for the province under the Interprovincial Standards Red Seal Program..

(2) Subsection (1) applies to taxation years ending on or after May 2, 2006, except that in its application to taxation years ending before October 2007, section 7310 of the Regulations, as enacted by subsection (1), is to be read as follows:

7310. For the purpose of the definition "eligible apprentice" in subsection 127(9) of the Act, a prescribed trade in respect of a province means, at all times in a taxation year, a trade that is, on September 30, 2007, a Red Seal trade for the province under the Interprovincial Standards Red Seal Program.

66. (1) Clause 8303(5)(*f.1*)(ii)(C) of the Regulations is replaced by the following:

(C) the plan is not a designated plan,

(2) Subparagraph 8303(5)(*f.2*)(iv) of the Regulations is replaced by the following:

(iv) the plan is not a designated plan,

(3) Subsections (1) and (2) apply to past service events that occur after 2007.

67. (1) Subsection 8500(1) of the Regulations is amended by adding the following in alphabetical order:

"designated plan"
« régime désigné »

"designated plan" has the meaning assigned by section 8515;

(2) Subsection 8500(2) of the Regulations is replaced by the following:

(2) All words and expressions used in this Part that are defined in subsection 147.1(1) of the Act or in Part LXXXIII have the meanings assigned in those provisions.

(3) Subsections (1) and (2) apply after 2007.

68. (1) The portion of paragraph 8503(3)(*a*) of the Regulations before subparagraph (i) is replaced by the following:

Eligible service

(*a*) the only lifetime retirement benefits provided under the provision to a member (other than additional lifetime retirement benefits provided to a member because the member is totally and permanently disabled at the time the member's retirement benefits commence to be paid) are lifetime retirement benefits provided in respect of one or more of the following periods (other than the portion of a period that is after the calendar year in which the member attains 71 years of age), namely,

(2) Subsection 8503(9) of the Regulations is amended by striking out the word "and" at the end of paragraph (*e*), by adding the word "and" at the end of paragraph (*f*) and by adding the following after paragraph (*f*):

(*g*) the provisions in paragraph (2)(*m*), Part LXXXIII and subsection 8517(4) that depend on whether the member's lifetime retirement benefits have commenced to be paid apply to past service events, commutations and transfers occurring in the period in which the member's benefits are suspended as if the member's benefits had not previously commenced to be paid.

(3) Section 8503 of the Regulations is amended by adding the following after subsection (15):

Definitions

(16) The following definitions apply in this subsection and in subsections (17) to (23).

“specified eligibility day” « *date d'admissibilité* »

“specified eligibility day” of a member under a defined benefit provision of a pension plan means the earlier of

(*a*) the later of

(i) the day on which the member attains 55 years of age, and

(ii) the day on which the member attains the earliest age at which payment of the member's lifetime retirement benefits may commence under the terms of the provision without a reduction computed by reference to the member's age, duration of service, or both (and without any other similar reduction), otherwise than because of the member being totally and permanently disabled; and

(*b*) the day on which the member attains 60 years of age.

“qualifying period” « *période admissible* »

“qualifying period” of a member under a defined benefit provision of a pension plan means a period throughout which the member is employed by an employer who participates in the plan but does not include any period that is before the day that is the first day, on or after the later of the following days, in respect of which retirement benefits are provided under the provision to the member:

(*a*) the day on which retirement benefits first commenced to be paid to the member under the provision; and

(*b*) the member's specified eligibility day under the provision.

Bridging benefits payable on a stand-alone basis

(17) The condition in subparagraph (2)(*b*)(i) that bridging benefits be payable to a member under a defined benefit provision of a pension plan for a period beginning no earlier than the time lifetime retirement benefits commence to be paid under the provision to the member does not apply where the following conditions are satisfied:

(*a*) the bridging benefits do not commence to be paid before the member's specified eligibility day under the provision;

(*b*) the plan provides that bridging benefits are payable under the provision to the member only for calendar months

(i) at any time in which the member is employed by an employer who participates in the plan, or

(ii) that begin on or after the time the member's lifetime retirement benefits under the provision commence to be paid;

(*c*) the member was not, at any time before the time at which the bridging benefits commence to be paid, connected with an employer who participates in the plan; and

(*d*) the plan is not a designated plan.

Rules of application

(18) Where bridging benefits under a defined benefit provision of a pension plan commence to be paid to a member in circumstances to which subsection (17) applies, the following rules apply:

(*a*) if the member dies before lifetime retirement benefits under the provision commence to be paid to the member, subsections (2) and (6) apply in respect of benefits provided under the provision on the death of the member as if the bridging benefits had not commenced to be paid before the member's death; and

(*b*) the provisions in Part LXXXIII, paragraph (2)(*m*) and subsection 8517(4) that depend on whether the member's retirement benefits have commenced to be paid apply to past service events, commutations and transfers occurring before lifetime retirement benefits under the provision commence to be paid to the member as if the bridging benefits had not commenced to be paid.

Benefit accruals after pension commencement

(19) Paragraph (3)(*b*) does not apply to retirement benefits (in this subsection and in subsections (20) and (21) referred to as "additional benefits") provided under a defined benefit provision of a pension plan to a member of the plan if the following conditions are satisfied:

(*a*) the additional benefits are provided in respect of all or part of a qualifying period of the member under the provision;

(*b*) the amount of retirement benefits payable to the member under the provision for each whole calendar month in the qualifying period does not exceed 5% of the amount (expressed on an annualized basis) of retirement benefits that have accrued under the provision to the member to the beginning of the month, determined without a reduction computed by reference to the member's age, duration of service, or both, and without any other similar reduction (except that, if the plan limits the amount of pensionable service of a member or prohibits the provision of benefits in respect of periods after a member attains a specific age or combination of age and pensionable service, this condition does not apply to any calendar month in respect of which no benefits can be provided to the member because of the limit or prohibition, as the case may be);

(*c*) no part of the additional benefits are provided as a consequence of a past service event, unless the benefits are provided in circumstances to which subsection 8306(1) would apply if no qualifying transfers were made in connection with the past service event;

(*d*) the member was not, at any time before the additional benefits become provided, connected with an employer who participates in the plan; and

(*e*) the plan is not a designated plan.

Redetermination of benefits

(20) Where the amount of retirement benefits payable under a defined benefit provision of a pension plan to a member is redetermined to include additional benefits provided to the member in respect of a qualifying period of the member under the provision, the conditions in paragraph (2)(*b*) and section 8504 apply in respect of benefits payable under the provision to the member after the redetermination as if the member's retirement benefits had first commenced to be paid at the time of the redetermination.

Rules of application

(21) Where additional benefits are provided under a defined benefit provision of a pension plan to a member in respect of a qualifying period of the member under the provision, the following rules apply:

(*a*) if the qualifying period ends as a consequence of the member's death, subsections (2) and (6) apply in respect of benefits provided under the provision on the death of the member as if the member's retirement benefits had not commenced to be paid before the member's death; and

(*b*) the provisions in Part LXXXIII, paragraph (2)(*m*) and subsection 8517(4) that depend on whether the member's retirement benefits have commenced to be paid apply to past service events, commutations and transfers occurring in the qualifying period as if the member's retirement benefits had not commenced to be paid.

Anti-avoidance

(22) Subsections (20) and (21) do not apply where it is reasonable to consider that one of the main reasons for the provision of additional benefits to the member is to obtain the benefit of any of those subsections.

Cross-plan rules

(23) Where a member is provided with benefits under two or more associated defined benefit provisions, the determination of whether the conditions in subsections (17) and (19) are satisfied in respect of benefits payable or provided to the member under a particular associated provision shall be made on the basis of the following assumptions:

(*a*) benefits payable to the member under each of the other associated provisions were payable under the particular associated provision;

(*b*) if, before the member's specified eligibility day (determined without reference to this paragraph) under the particular associated provision, the member had commenced to receive retirement benefits under another associated provision on or after the member's specified eligibility day under that provision, the member's specified eligibility day under the particular associated provision were the member's specified eligibility day under that other associated provision; and

(*c*) if one or more of the other associated provisions is in a designated plan, the plan that includes the particular provision were also a designated plan.

Associated defined benefit provisions

(24) For the purpose of subsection (23), a defined benefit provision is associated with another defined benefit provision (other than a provision that is not in a registered pension plan) if

(*a*) the provisions are in the same pension plan; or

(*b*) the provisions are in separate pension plans and

(i) there is an employer who participates in both plans, or

(ii) an employer who participates in one of the plans does not deal at arm's length with an employer who participates in the other plan.

Subsection (24) not applicable

(25) A particular defined benefit provision of a pension plan is not associated with a defined benefit provision of another pension plan if it is unreasonable to expect the benefits under the particular provision to be coordinated with the benefits under the other provision and the Minister has agreed not to treat the particular provision as being associated with the other provision.

(4) Subsections (1) to (3) apply to benefits that are provided or payable after 2007.

69. (1) The portion of subsection 8504(2) of the Regulations before paragraph (*a*) is replaced by the following:

(2) For the purposes of subsection (1) and paragraph 8505(3)(*d*), the highest average compensation of a member of a pension plan for the purpose of a defined benefit provision of the plan, indexed to the calendar year (in this subsection referred to as the "year of commencement") in which the member's lifetime retirement benefits under the provision commence to be paid, is,

(2) Subsection (1) applies to the 2008 and subsequent calendar years.

70. (1) Paragraph 8507(3)(*a*) of the Regulations is amended by striking out the word "and" at the end of subparagraph (v) and by adding the following after subparagraph (vi):

(vii) no part of the period is after the earlier of

(A) the time at which bridging benefits commence to be paid to the individual in circumstances to which subsection 8503(17) applied, and

(B) the earliest day in respect of which benefits have been provided to the individual in circumstances to which subsection 8503(19) applied; and

(2) Subsection (1) applies to the 2008 and subsequent calendar years.

71. (1) Paragraphs 8514(2)(*b*) and (*c*) of the Regulations are amended by replacing each reference to "stock exchange referred to in section 3200 or 3201" in those paragraphs with a reference to "designated stock exchange".

(2) Subsection (1) comes into force on the day on which this Act is assented to.

72. (1) Paragraph 8516(2)(*d*) of the Regulations is replaced by the following:

(*d*) at the time the contribution is made, the plan is not a designated plan.

(2) Paragraph 8516(3)(*d*) of the Regulations is replaced by the following:

(*d*) at the time the contribution is made, the plan is not a designated plan.

(3) Paragraph 8516(4)(*e*) of the Regulations is replaced by the following:

(*e*) at the time the contribution is made, the plan is not a designated plan.

(4) Subsections (1) to (3) apply after 2007.

73. (1) The Regulations are amended by replacing each reference to "stock exchange referred to in section 3200" in the following provisions with a reference to "designated stock exchange in Canada":

(*a*) subparagraph 4900(1)(*i*)(i);

(*b*) the portion of subparagraph 4900(1)(*i*)(ii) after clause (C);

(*d*) the portion of 6201(1) before paragraph (*a*);

(*c*) the portion of subsection 6201(2) before paragraph (*a*); and

(*e*) the portion of subsection 6201(4) before paragraph (*a*).

(2) Subsection (1) comes into force on the day on which this Act is assented to.

74. (1) The Regulations are amended by adding the following after Part XCIII:

PART XCIV

PRESCRIBED PROGRAMS OF PHYSICAL ACTIVITY

9400. (1) The following definitions apply in this Part.

"physical activity" « *activité physique* »

"physical activity" means a supervised activity suitable for children (other than an activity where a child rides on or in a motorized vehicle as an essential component of the activity) that

(*a*) in the case of a qualifying child in respect of whom an amount is deductible under section 118.3 of the Act in computing any person's income for the taxation year, results in movement and in an observable expenditure of energy in a recreational context; and.

(*b*) in the case of any other child, contributes to cardio-respiratory endurance and to one or more of the following:

(i) muscular strength,

(ii) muscular endurance,

(iii) flexibility, and

(iv) balance.

"qualifying child" « *enfant admissible* »

"qualifying child" has the meaning assigned by subsection 118.03(1) of the Act.

Prescribed program of physical activity

(2) For the purpose of the definition "eligible fitness expense" in subsection 118.03(1) of the Act, a prescribed program of physical activity is

(*a*) a weekly program, that is not part of a school's curriculum, of a duration of 8 or more consecutive weeks in which all or substantially all of the activities include a significant amount of physical activity;

(*b*) a program, that is not part of a school's curriculum, of a duration of 5 or more consecutive days of which more than 50% of the daily activities include a significant amount of physical activity;

(*c*) a program, that is not part of a school's curriculum, of a duration of 8 or more consecutive weeks, offered to children by a club, association or similar organization (in this section referred to as an "organization") in circumstances where a participant in the program may select amongst a variety of activities if

(i) more than 50% of those activities offered to children by the organization are activities that include a significant amount of physical activity, or

(ii) more than 50% of the time scheduled for activities offered to children in the program is scheduled for activities that include a significant amount of physical activity; or

(*d*) a membership in an organization, that is not part of a school's curriculum, of a duration of 8 or more consecutive weeks if more than 50% of all the activities offered to children by the organization include a significant amount of physical activity.

Mixed-use facility

(3) For the purpose of the definition "eligible fitness expense" in subsection 118.03(1) of the Act, a prescribed program of physical activity is that portion of a program, which program does not meet the requirements of paragraph (2)(*c*) and is not part of a school's curriculum, of a duration of 8 or more consecutive weeks, offered to children by an organization in circumstances where a participant in the program may select amongst a variety of activities

(*a*) that is the percentage of those activities offered to children by the organization that are activities that include a significant amount of physical activity, or

(*b*) that is the percentage of the time scheduled for activities in the program that is scheduled for activities that include a significant amount of physical activity.

Membership

(4) For the purpose of the definition "eligible fitness expense" in subsection 118.03(1) of the Act, a prescribed program of physical activity is that portion of a membership in an organization, which membership does not meet the requirements of paragraph (2)(*d*) and is not part of a school's curriculum, of a duration of 8 or more consecutive weeks that is the percentage of all the activities offered to children by the organization that are activities that include a significant amount of physical activity.

Horseback riding

(5) For the purpose of the definition "physical activity", horseback riding is deemed to be an activity that contributes to cardio-respiratory endurance and to one or more of muscular strength, muscular endurance, flexibility and balance.

(2) Subsection (1) applies after 2006.

CANADA PENSION PLAN REGULATIONS

75. (1) Paragraphs 8(1.12)(*a*) and (b) of the *Canada Pension Plan Regulations* are replaced by the following:

(*a*) the average monthly withholding amount in respect of an employer for either the first or the second calendar year before the particular calendar year that includes that time is less than $3,000,

(*b*) throughout the 12-month period before that time, the employer has remitted, on or before the day on or before which the amounts were required to be remitted, all amounts each of which was required to be remitted under subsection 21(1) of the Act, under subsection 82(1) of the *Employment Insurance Act*, under Part IX of the *Excise Tax Act* or under subsection 153(1) of the *Income Tax Act*, and

(2) Subsection (1) applies in respect of amounts required to be deducted or withheld after 2007.

INSURABLE EARNINGS AND COLLECTION OF PREMIUMS REGULATIONS

76. (1) Paragraphs 4(3.1)(*a*) and (b) of the *Insurable Earnings and Collection of Premiums Regulations* is replaced by the following:

(*a*) the average monthly withholding amount in respect of an employer for either the first or the second calendar year before the particular calendar year that includes that time is less than $3,000,

(*b*) throughout the 12-month period before that time, the employer has remitted, on or before the day on or before which the amounts were required to be remitted, all amounts each of which was required to be remitted under subsection 82(1) of the Act, under subsection 21(1) of the *Canada Pension Plan*, under Part IX of the *Excise Tax Act*, or under subsection 153(1) of the *Income Tax Act*, and

(2) Subsection (1) applies in respect of amounts required to be deducted or withheld after 2007.

PART 2

AMENDMENTS IN RESPECT OF THE GOODS AND SERVICES TAX/ HARMONIZED SALES TAX

EXCISE TAX ACT

77. (1) Section 217 of the *Excise Tax Act* is amended by adding the following after paragraph (*c*):

(*c.1*) a taxable supply made in Canada of intangible personal property that is a zero-rated supply only because it is included in section 10 or 10.1 of Part V of Schedule VI, other than

(i) a supply that is made to a consumer of the property, or

(ii) a supply of intangible personal property that is acquired for consumption, use or supply exclusively in the course of commercial activities of the recipient of the supply or activities that are engaged in exclusively outside Canada by the recipient of the supply and that are not part of a business or adventure or concern in the nature of trade engaged in by that recipient in Canada,

(2) Subsection (1) applies to supplies made after March 19, 2007.

78. (1) Paragraph 218.1(1)(*d*) of the Act is replaced by the following:

(*d*) every person who is the recipient of a supply that is included in any of paragraphs 217 (*c.1*), (*d*) or (*e*) and that is made in a particular participating province

(2) Subsection (1) applies to supplies made after March 19, 2007.

79. (1) Paragraph 236(1)(*b*) of the Act is replaced by the following:

(*b*) one or both of the following situations apply:

(i) subsection 67.1(1) of the *Income Tax Act* applies, or would apply, if the person were a taxpayer under that Act, to all of the composite amount or that part of it that is, for the purposes of that Act, an amount (other than an amount to which subsection 67.1(1.1) of that Act applies) paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment and section 67.1 of that Act deems the composite amount or that part to be 50% of a particular amount, and

(ii) subsection 67.1(1.1) of that Act applies, or would apply, if the person were a taxpayer under that Act, to all of the composite amount or that part of it that is, for the purposes of that Act, an amount paid or payable in respect of the consumption of food or beverages by a long-haul truck driver during the driver's eligible travel period (as those terms are defined in section 67.1 of that Act), and section 67.1 of that Act deems the composite amount or that part to be a percentage of a specified particular amount, and

(2) The formula and its descriptions in subsection 236(1) of the Act are replaced by the following:

$$[50\% \times (A/B) \times C] + [40\% \times (D/B) \times C]$$

where

A is

(i) in the case where subparagraph (*b*)(i) applies, the particular amount, and

(ii) in any other case, zero,

B is the composite amount,

C is the input tax credit, and

D is

(i) in the case where subparagraph (*b*)(ii) applies, the specified particular amount, and

(ii) in any other case, zero.

(3) The formula in subsection 236(1) of the Act, as enacted by subsection (2), is replaced by the following:

$$[50\% \times (A/B) \times C] + [35\% \times (D/B) \times C]$$

(4) The formula in subsection 236(1) of the Act, as enacted by subsection (3), is replaced by the following:

$$[50\% \times (A/B) \times C] + [30\% \times (D/B) \times C]$$

(5) The formula in subsection 236(1) of the Act, as enacted by subsection (4), is replaced by the following:

$$[50\% \times (A/B) \times C] + [25\% \times (D/B) \times C]$$

(6) The formula in subsection 236(1) of the Act, as enacted by subsection (5), is replaced by the following:

$$[50\% \times (A/B) \times C] + [\underline{20\%} \times (D/B) \times C]$$

(7) Subsections (1) and (2) apply to

(*a*) amounts in respect of a supply of food, beverages or entertainment if tax under Part IX of the Act in respect of the supply becomes payable, or is paid without having become payable, after March 19, 2007 and before 2008 and no allowance or reimbursement is paid in respect of the supply; and

(*b*) amounts paid after March 19, 2007 and before 2008 as an allowance or reimbursement in respect of a supply of food, beverages or entertainment.

(8) Subsection (3) applies to

(*a*) amounts in respect of a supply of food, beverages or entertainment if tax under Part IX of the Act in respect of the supply becomes payable, or is paid without having become payable, in 2008 and no allowance or reimbursement is paid in respect of the supply; and

(*b*) amounts paid in 2008 as an allowance or reimbursement in respect of a supply of food, beverages or entertainment.

(9) Subsection (4) applies to

(*a*) amounts in respect of a supply of food, beverages or entertainment if tax under Part IX of the Act in respect of the supply becomes payable, or is paid without having become payable, in 2009 and no allowance or reimbursement is paid in respect of the supply; and

(*b*) amounts paid in 2009 as an allowance or reimbursement in respect of a supply of food, beverages or entertainment.

(10) Subsection (5) applies to

(*a*) amounts in respect of a supply of food, beverages or entertainment if tax under Part IX of the Act in respect of the supply becomes payable, or is paid without having become payable, in 2010 and no allowance or reimbursement is paid in respect of the supply; and

(*b*) amounts paid in 2010 as an allowance or reimbursement in respect of a supply of food, beverages or entertainment.

(11) Subsection (6) applies to

(*a*) amounts in respect of a supply of food, beverages or entertainment if tax under Part IX of the Act in respect of the supply becomes payable, or is paid without having become payable, after 2010 and no allowance or reimbursement is paid in respect of the supply; and

(*b*) amounts paid after 2010 as an allowance or reimbursement in respect of a supply of food, beverages or entertainment.

80. (1) Subsection 237(3) of the Act is replaced by the following:

Minimum instalment base

(3) For the purposes of subsection (1), if a registrant's instalment base for a reporting period is less than $3,000, it is deemed to be nil.

(2) Subsection (1) applies to reporting periods beginning after 2007.

81. (1) Subsection 248(1) of the Act is replaced by the following:

Election for fiscal years

248. (1) A registrant that is a charity on the first day of a fiscal year of the registrant or whose threshold amount for a fiscal year does not exceed $1,500,000 may make an election to have reporting periods that are fiscal years of the registrant, to take effect on the first day of that fiscal year.

(2) Paragraphs 248(2)(*b*) and (*c*) of the Act are replaced by the following:

(*b*) if the person is not a charity and the threshold amount of the person for the second or third fiscal quarter of the person in a fiscal year of the person exceeds $1,500,000, the beginning of the first fiscal quarter of the person for which the threshold amount exceeds that amount, and

(*c*) if the person is not a charity and the threshold amount of the person for a fiscal year of the person exceeds $1,500,000, the beginning of that fiscal year.

(3) Subsections (1) and (2) apply to fiscal years beginning after 2007.

82. (1) Schedule VII of the Act is amended by adding the following after section 1.1:

1.2 For the purposes of section 1, subsection 140(2) of the *Customs Tariff* does not apply in respect of the reference to heading 98.04.

(2) Subsection (1) is deemed to have come into force on January 1, 1998.

PART 3

AMENDMENT TO THE EXCISE TAX ACT (OTHER THAN WITH RESPECT TO THE GOODS AND SERVICES TAX/HARMONIZED SALES TAX)

83. (1) Sections 23.4 and 23.5 of the *Excise Tax Act* are repealed.

(2) Subsection (1) comes into force, or is deemed to have come into force, on April 1, 2008.

Explanatory Notes

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Income Tax Application Rules*, the *Income Tax Conventions Interpretation Act*, the *Income Tax Regulations*, the *Canada Pension Plan Regulations*, the *Insurable Earnings and Collection of Premiums Regulations* and the *Excise Tax Act*. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

These amendments assume that amendments consistent with those proposed in Bill C-33 are in place.

References to "Announcement Date" in the proposed legislation and explanatory notes should be read as referring to the date this material was released.

The Honourable James. M. Flaherty, P.C., M.P.
Minister of Finance

These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

Table of Contents

Part 1
Amendments Related to Income Tax

Income Tax Act

Clause in Legislation	Section of the Act Amended	Topic	Page
1	17	Amount owing by non-resident	147
2	18(9)	Limitation respecting prepaid expenses	150
3	18.2	Definitions - double-dip financing	150
4	19(5)	Replacement of "prescribed stock exchange" by "designated stock exchange"	156
5	20	Deductions permitted in computing income from business or property	156
6	38(*a.1*)	Taxable capital gain – donation of listed securities	157
7	53	Adjusted cost base of partnership interest	157
8	56(3)	Scholarships and bursaries	158
9	60(*x*)	Repayment under *Canada Education Savings Act*	158
10	66	Canadian and foreign exploration and development expenses	158
11	67.1	Expenses for food, etc.	159
12	80(1)	Replacement of "prescribed stock exchange" by "designated stock exchange"	160
13	89(1)	Replacement of "prescribed stock exchange" by "designated stock exchange"	160
14	91	Foreign affiliate income	161
15	92	Adjusted cost base of foreign affiliate	161
16	95	Foreign affiliates	162
17	104(21.2)	Beneficiaries' taxable capital gain	223
18	108(2)	Replacement of "prescribed stock exchange" by "designated stock exchange"	224
19	110(1)(*d.01*)	Charitable donation of employee option securities	224
20	110.1	Gifts of medicine	224
21	110.6	Capital gains deduction	225
22	115(2.3)	Non-resident persons – 2010 Olympic and Paralympic Winter Games	227
23	116(6)(*b*)	Replacement of "prescribed stock exchange" by "recognized stock exchange"	228
24	117(2.1)	Tax payable – WITB advance payment	228
25	117.1(1)	Annual adjustment	228
26	118	Personal credits	229
27	118.02	Transit pass tax credit	229
28	118.03	Child fitness tax credit	230
29	118.1	Exchange of beneficial interest in trust	232

Clause in Legislation	Section of the Act Amended	Topic	Page
30	120(4)	Definitions	234
31	122.1(1)	SIFT trusts – definitions - REIT	234
32	122.7	Working Income Tax Benefit	235
33	127	Investment tax credits	245
34	141(5)	Replacement of "prescribed stock exchange" by "designated stock exchange"	251
35	146.1(1)	Registered education savings plans - definitions	251
36	149.1	Charities	252
37	149.2	Excess corporate holdings of private foundations	260
38	152	Assessment	265
39	153(1)	Withholding obligation – exemption	265
40	156.1	No instalment required	265
41	157	Instalment payments	266
42	161(4.1)	Limitations - corporations	269
43	163(2)(*c.3*)	False statements or omissions	269
44	182(2)	Tobacco manufacturers' surtax – definitions	270
45	186.1(*b*)(vii)	Exemption from Part IV tax	270
46	188.1	Penalty for excess corporate holdings	270
47	204	"qualified investment"	272
48	212	Non-residents' Canadian-source interest income	272
49	214	Part XIII rules	275
50	220	Administration	275
51	241(4)(*q*)	Where taxpayer information may be disclosed	276
52	248(1)	Definitions	276
53	260(1)	Replacement of "prescribed stock exchange" by "stock markets" – securities lending arrangements	277
54	261	Functional currency reporting	277
	262	Authority to designate stock exchange	299
55	Various	Replacement of "prescribed stock exchange" by "designated stock exchange"	300

Income Tax Application Rules

56	10(5)	Certificates of exemption	302

Income Tax Conventions Interpretation Act

57	4.2	Stock exchanges	303

Income Tax Regulations

Clause in Legislation	Section of the Act Amended	Topic	Page
58	108(1.12)	Remittance - quarterly basis	304
59	3200 & 3201	Stock exchanges	304
60	3700	Replacement of "prescribed stock exchange" by "designated stock exchange"	307
61	3702	Replacement of "prescribed stock exchange" by "designated stock exchange"	307
62	4800	Replacement of "prescribed stock exchange" by "designated stock exchange"	307
63	6201	Term preferred share and taxable RFI share	307
64	7303.1	Northern residents deduction	307
65	7310	"prescribed trades"	308
66	8303(5)	Past service pension adjustment – normalized pension	308
67	8500	Interpretation	308
68	8503	Permissible benefits	309
69	8504	Highest average compensation	315
70	8507(3)(*a*)	Qualifying periods and periods of parenting	315
71	8514	Replacement of "prescribed stock exchange" by "designated stock exchange"	316
72	8516	Eligible contributions	316
73	Various	Replacement of "prescribed stock exchange" by "designated stock exchange"	316
74	9400	Prescribed programs of physical activity	316

Canada Pension Plan Regulations

75	8(1.12)	Remittance - quarterly basis	319

Insurable Earnings and Collection of Premiums Regulations

76	4(3.1)	Withholding amount	320

Part 2
Amendments in Respect of the Goods and Services Tax/Harmonized Sales Tax

Excise Tax Act

77	217	Imported taxable supply	321
78	218.1	Tax in participating province	322
79	236(1)	Meal expenses of truck drivers	322
80	237(3)	Minimum instalment base	323
81	248	Election for fiscal years	323
82	VII/1.2	Non-taxable importations	324

Part 3
Amendments to the Excise Tax Act
(Other than with Respect to the Goods and Services Tax/Harmonized Sales Tax)

Excise Tax Act

83	23.4 & 23.5	Excise taxation of renewable fuels	325

Part 1

Amendments Related to Income Tax

Income Tax Act

Clause 1

Amount owing by non-resident

ITA
17

Section 17 of the *Income Tax Act* (the Act) provides rules dealing with the situation where a non-resident person owes an amount to a corporation resident in Canada. Subsection 17(1) generally applies where such an amount has remained outstanding for more than one year without the corporation including interest on that amount, computed at a reasonable rate, in computing its income. Where subsection 17(1) applies, it treats the corporation resident in Canada as having received interest on that amount, computed at a prescribed rate, at the end of each taxation year of the corporation during which that amount was outstanding.

Exception re subsection 17(1)

ITA
17(8)

Subsection 17(8) of the Act provides an exception to subsection 17(1) for a taxation year of a corporation resident in Canada with respect to amounts owing by a non-resident person to the corporation where

- the non-resident person is a controlled foreign affiliate of the corporation throughout the period in the year during which the amount is owing, and
- the amount owing meets the conditions of paragraph 17(8)(*a*) or (*b*).

As currently worded, subsection 17(8) is an all or nothing provision in that the entire amount owing must meet the conditions of paragraph 17(8)(*a*) or (*b*). Subsection 17(8) is amended to relax that requirement and to ensure that any portion of that amount that satisfies the conditions in paragraph 17(8)(*a*) or (*b*) will qualify for the exception from subsection 17(1).

Amended subsection 17(8) applies to taxation years that begin after February 23, 1998. The set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any taxation year that begins after February 23, 1998 and ends before Announcement Date shall be made that is necessary to take amended subsection 17(8) into account.

Borrowed money

ITA
17(8.1) and (8.2)

Currently, the exception afforded by subsection 17(8) is not available in circumstances where the amount owing by the controlled foreign affiliate of a corporation resident in Canada is incurred to pay a previously existing indebtedness of the affiliate to another person or partnership (other than the corporation resident in Canada). This result ensues because the amount owing arose for the purpose of allowing the affiliate to pay the previously existing indebtedness rather than for a use identified under paragraph 17(8)(*a*) or (*b*). New subsections 17(8.1) and (8.2) are introduced to address this issue.

New subsection 17(8.1) provides that new subsection 17(8.2) applies in respect of money (referred to as "new borrowings") that a controlled foreign affiliate of a particular corporation resident in Canada has borrowed from the particular corporation where the affiliate has used the new borrowings

- to repay money (referred to as "previous borrowings") previously borrowed from any person or partnership, if
  - the previous borrowings became owing after the last time at which the affiliate became a controlled foreign affiliate of the particular corporation, and
  - the previous borrowings were, at all times after they became owing, used for a purpose described in subparagraph 17(8)(*a*)(i) or (ii), or
- to pay an amount owing (referred to as the "unpaid purchase price") by the affiliate for property previously acquired from any person or partnership, if
  - the property was acquired, and the unpaid purchase price became owing, by the affiliate after the last time at which the affiliate became a controlled foreign affiliate of the particular corporation,
  - the unpaid purchase price is in respect of the property, and
  - throughout the period that began when the unpaid purchase price became owing by the affiliate and ended when the unpaid purchase price was so paid, the property had been used principally to earn income described in clause 17(8)(*a*)(i)(A) or (B).

New subsection 17(8.2) provides that the new borrowings are, for the purpose of subsection 17(8), deemed to have been used for the purpose for which the proceeds from the previous borrowings were used or were deemed by subsection 17(8.2) to have been used, or to acquire the property in respect of which the unpaid purchase price was payable, as the case may be.

New subsections 17(8.1) and (8.2) apply to taxation years that begin after February 23, 1998. The enacting legislation will provide that, notwithstanding subsections 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any taxation year that begins after February 23, 1998 and ends before Announcement Date shall be made that is necessary to take new subsections 17(8.1) and (8.2) into account.

Definition "controlled foreign affiliate"

ITA
17(15)

Subsection 17(15) of the Act contains definitions that apply to section 17. One of those definitions is the definition of "controlled foreign affiliate" in subsection 17(15) which uses the definition of "controlled foreign affiliate" in subsection 95(1) with certain modifications.

The definition of "controlled foreign affiliate" in subsection 17(15) is amended consequential to the proposed amendments to the definition "controlled foreign affiliate" in subsection 95(1). Please refer to the commentary for subsection 95(1) for details about the amendments to the definition of "controlled foreign affiliate" in that subsection.

The amended definition of "controlled foreign affiliate" in subsection 17(15) provides that "controlled foreign affiliate", at any time, of a taxpayer resident in Canada, means a corporation that would, at that time, be a controlled foreign affiliate of the taxpayer within the meaning assigned by the definition of "controlled foreign affiliate" in subsection 95(1) if

- the word "or" were added at the end of paragraph (*a*) of that definition,
- subparagraph (*b*)(ii) of that definition were read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with the taxpayer",

- subparagraph (*b*)(iv) of that definition were read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with any relevant Canadian shareholder", and
- that definition were read without reference to its paragraph (*c*).

This amended definition of "controlled foreign affiliate" in subsection 17(15) applies to taxation years of a foreign affiliate of a taxpayer that begin after February 23, 1998. However, the following transitional rules apply for taxation years that begin after February 23, 1998 and on or before February 27, 2004. Those transitional rules correspond to the transitional rules for the definition "controlled foreign affiliate" in subsection 95(1). Please refer to the commentary for the definition "controlled foreign affiliate" in subsection 95(1) for detail.

The first such transitional rule for the definition "controlled foreign affiliate" in subsection 17(15) applies, for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004. For those taxation years, the definition "controlled foreign affiliate" in subsection 17(15) is to be read as follows:

> "controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004, if the word "or" were added at the end of paragraph (*a*) of that definition and
>
> (a) subparagraph (*b*)(ii) of that definition read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with the taxpayer,",
>
> (b) subparagraph (*b*)(iv) of that definition read as "all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons resident in Canada who do not deal at arm's length with any relevant Canadian shareholder;", and
>
> (c) that definition were read without reference to its paragraph (*c*).

The second such transitional rule applies for taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998 and before 2003. For those taxation years, the definition "controlled foreign affiliate" in subsection 17(15) is to be read as follows:

> "controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) for taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998 and before 2003, if subparagraph (*b*)(iii) of that definition were read as "each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any person resident in Canada with whom the taxpayer does not deal at arm's length.".

Clause 2

Limitation respecting prepaid expenses

ITA
18(9)

Subsection 18(9) of the Act defers the deduction of certain prepaid expenses to the taxation year to which the expenses relate.

ITA
18(9)(*f*)

New paragraph 18(9)(*f*) is added to the Act consequential to the introduction of investment tax credits (ITCs) for the creation of child care spaces. This amendment clarifies that, for the purpose of the definition "eligible child care space expenditure" in subsection 127(9) of the Act, an expenditure that is not deductible in a taxation year because of the application of paragraph 18(9)(*a*) of the Act is to be treated as not being made or incurred in the year but rather made or incurred in the taxation year to which the expenditure can reasonably be considered to relate. Consequently, a prepaid expense that is within the meaning of the definition "eligible child care space expenditure" is considered to be incurred for the purpose of claiming an ITC in the taxation year to which the prepaid expense can reasonably be considered to relate (instead of the year in which it was paid). New paragraph 18(9)(*f*) applies to expenses incurred on or after March 19, 2007.

Clause 3

Double-dip financing

ITA
18.2

New section 18.2 of the Act introduces a new limit on the deductibility, in computing the income of a corporation from a business or property for a taxation year, of certain interest and other financing expenses. The limit applies to interest payable (or, if the corporation uses the cash method of accounting for income tax purposes, interest paid) in respect of any period that begins after 2011.

Definitions

ITA
18.2(1)

New subsection 18.2(1) of the Act sets out several definitions that apply in section 18.2

"aggregate double-dip income"

The new definition "aggregate double-dip income" is relevant for determining the extent to which a specified financing expense (please refer to the definition of that term in subsection 18.2(2)) is denied under these rules. Aggregate double-dip income is determined in respect of a particular inter-affiliate loan, and is, generally, the amount of interest income in respect of the inter-affiliate loan that is re-characterized as active income of a foreign affiliate of the taxpayer and is included in the affiliate's exempt or taxable surplus. Broadly speaking, the Canadian deduction will be denied if the borrowing has produced a second deduction in another jurisdiction, and aggregate double-dip income represents the extent to which this is the case.

"double-dip exempt earnings amount"

A corporation's "double-dip exempt earnings amount" for a taxation year is a component of its aggregate double-dip income for the taxation year, and is comprised of certain income derived by a foreign affiliate of the corporation (or by a foreign affiliate of another corporation with which it does not deal at arm's length). The income in question is in respect of an "inter-affiliate loan" owing to the foreign affiliate, and is included in its exempt surplus account.

The "double-dip exempt earnings amount" is determined by multiplying the particular corporation's "participating percentage" (please refer to the new definition of that term, below) in a foreign affiliate by the amount of "recharacterized income" attributable to the inter-affiliate loan for the taxation year that is included in exempt surplus of the affiliate, less the amount of any tax paid that is attributable to that recharacterized income (grossed up by the corporation's relevant tax factor). This calculation is formally carried out on a share-by-share basis.

"double-dip taxable earnings amount"

The new definition "double-dip taxable earnings amount" in subsection 18.2(1) is virtually identical to the definition "double-dip exempt earnings amount", except that the determination is made only in respect of re-characterized income of the earning foreign affiliate that is included in the *taxable surplus* of the earning foreign affiliate, as opposed to its exempt surplus. The distinction between exempt earnings and taxable earnings for the purposes of determining aggregate double-dip income is necessary because where a taxpayer is denied a deduction for a specified financing expense to the extent of a double-dip *taxable* earning amount, the taxpayer is entitled to an increase in the basis of shares that it owns of a particular foreign affiliate, as that term is used in the definition of participating percentage. (Please refer to the definitions of "participating percentage" and "taxable earnings basis adjustment".)

"foreign accrual tax"

The new definition "foreign accrual tax" in subsection 18.2(1) is relevant for the determination of "double-dip exempt earnings amount" and "double-dip taxable earnings amount". Generally, where income earned by a foreign affiliate in respect of an inter-affiliate loan bears foreign tax, to the extent that this income is considered fully taxed for Canadian tax purposes the amount will not be included in the calculation of a "double-dip exempt earnings amount" or a "double-dip taxable earnings amount", as that amount is not considered a second deduction in a foreign jurisdiction such that it would result in a denial of deductibility of a specified financing expense.

Foreign accrual tax is the total of two amounts. The first is that portion of any income or profit taxes that can reasonably be regarded as applicable to the re-characterized income. The second is the amount that would, if the re-characterized income were included in computing the particular corporation's income under subsection 91(1), be prescribed in respect of the earning foreign affiliate to be foreign accrual tax that is applicable to the re-characterized income for the purpose of the definition "foreign accrual tax" in subsection 95(1).

"inter-affiliate loan"

The new definition "inter-affiliate loan" is relevant for the determination of aggregate double-dip income, and means, generally, a debt that is owing to a foreign affiliate if the income that the foreign affiliate derives in a taxation year from the interest paid or payable in respect of the debt is "re-characterized income" (please refer to the definition of that term, below) of the foreign affiliate for the taxation year.

"participating percentage"

The new definition "participating percentage" in subsection 18.2(1) is used to identify the extent to which aggregate double dip income in respect of an inter-affiliate loan is attributable to a particular corporation. A particular corporation that holds shares of its own foreign affiliate, or of a foreign affiliate of a corporation that does not deal at arm's length with it, will have a "participating percentage" in respect of each of those shares.

This new definition is an adaptation of, and relies upon, the definition "participating percentage" in subsection 95(1) of the Act. To understand the new definition's operation, it is important to be clear as to the identities of the corporations in question. The foreign affiliate in which a corporation has a participating percentage is referred to in the new definition as a "particular foreign affiliate." The new definition refers as well to an "earning foreign affiliate". The earning foreign affiliate – which may or may not be the same entity as the specified foreign affiliate – is also a foreign affiliate of the particular corporation or of a non-arm's length corporation.

In brief, the particular corporation's participating percentage of a share (the "specified share") of the particular foreign affiliate is the percentage that would, if the earning foreign affiliate were a controlled foreign affiliate of the particular corporation, be determined under subparagraph (*b*)(i) or (ii) of the definition "participating percentage" in subsection 95(1) in respect of the specified share in respect of the earning foreign affiliate at the end of the particular taxation year.

"re-characterized income"

The new definition "re-characterized income" in subsection 18.2(1) is relevant for the purpose of determining whether a loan between foreign affiliates is an "inter-affiliate loan". It is the total of the re-characterized exempt earnings income and the re-characterized taxable earnings income, of the foreign affiliate for the taxation year from the inter-affiliate loan, which are in turn components of a corporation's double-dip exempt earnings amount or double-dip taxable earnings amount.

"re-characterized exempt earnings income"

The new definition in subsection 18.2(1) of "re-characterized exempt earnings income" of a foreign affiliate of a corporation for a taxation year in respect of an inter-affiliate loan owing to the foreign affiliate refers to a portion of the foreign affiliate's income for the taxation year from the inter-affiliate loan. The portion in question is whatever amount of that income is included in computing the foreign affiliate's active business income (or that would be so included if the income were income from property), as well as in computing the foreign affiliate's exempt earnings for the taxation year.

"re-characterized taxable earnings income"

The new definition in subsection 18.2(1) of "re-characterized taxable earnings income" of a foreign affiliate of a corporation for a taxation year in respect of an inter-affiliate loan owing to the foreign affiliate parallels the definition of "re-characterized exempt earnings income", with the difference that it looks to the inclusion of an amount in computing the amount prescribed to be the taxable earnings of the foreign affiliate for the taxation year.

"taxable earnings base adjustment"

The new definition "taxable earnings base adjustment" in subsection 18.2(1) provides a mechanism by which the amount of a corporation's specified financing expense can be recognized for tax purposes, if a deduction for the expense has been denied. Where aggregate double-dip income in respect of an inter-affiliate loan consists of a double-dip taxable earnings amount, then the amount of interest deduction that is denied under these rules in respect of that amount is added to the cost base of the share of the foreign affiliate in which the corporation has a participating percentage (please refer to the new definition of that term). This addition figures in amended subsection 92(1) of the Act. Alternatively, if the denial is in respect of a specified financing expense of a partnership of which the corporation is a member, then the amount is added to the basis of the partnership interest (please refer to new subparagaph 53(1)(*e*)(xiv) of the Act).

Double-dip interest not deductible

ITA
18.2(2)

New subsection 18.2(2) of the Act provides the basic rule for the section. That rule stipulates that no amount may be deducted in respect of a corporation's specified financing expense in respect of an inter-affiliate loan for the taxation year, except to the extent that the specified financing expense exceeds the corporation's aggregate double dip income for the taxation year in respect of that inter-affiliate loan. The existence of aggregate double-dip income in respect of an inter-affiliate loan establishes that the corporation, through its affiliate, is able to obtain a second deduction in respect of the borrowing in Canada. In other words, where an amount of interest (or other borrowing cost) is otherwise deductible for Canadian tax purposes, that deduction will be denied to the extent that a deduction is also available in another jurisdiction.

This rule applies separately in respect of each inter-affiliate loan of a corporation, and not on a cumulative basis.

Specified financing expense

ITA
18.2(3)

The new definition of "specified financing expense" in new subsection 18.2(3) of the Act is a fundamental component of section 18.2's new rules. In general terms, a specified financing expense is an amount of interest (or other costs referred to in paragraph 20(1)(*e*)) to the extent that those costs relate to the funding of an inter-affiliate loan (please refer to definition of that term). As with the rules for the deductibility of interest in general under paragraph 20(1)(*c*) of the Act, these rules contemplate circumstances under which a specified financing expense relates either to borrowed money or to an amount payable for property.

In determining whether a connection between the expense and an inter-affiliate loan exists, a tracing approach is used, however, unlike the tracing concept applied to determinations under paragraph 20(1)(*c*), subsection 18.2(3) includes an explicit reference to the "indirect" funding of an inter-affiliate loan. This reliance on "indirect" tracing is necessary because in a typical double-dip financing structure money will be borrowed in Canada and invested in shares of at least one other corporation before ultimately being used to fund an inter-affiliate loan. In these circumstances it would not be accurate to say that the borrowed money was used directly to fund the inter-affiliate loan; rather, the funds were directly used to purchase shares of a corporation. However, it is the case that the borrowed money has been used *indirectly* to fund the inter-affiliate.

Although the criteria used to determine whether an amount payable can be traced to the funding of a loan are slightly different from those used in the case of borrowed money, in both cases the connection between the expense and the funding of the inter-affiliate loan must be established in order for the expense to be considered a specified financing expense.

The amount of any specified financing expense is reduced by the amount of any interest income received by the corporation from on-lending the borrowed money or other property acquired. Therefore, where a corporation borrows funds and then lends those funds to a related corporation that in turn uses the proceeds to fund an inter-affiliate loan, the first corporation, to the extent that interest earned on the subsequent loan offsets the interest payable on the initial loan, will not have a specified financing expense.

The following examples illustrate circumstances in which it is intended that an expense be considered a specified financing expense, and examples in which that is not the case. In these examples, Canco and any Cansub are corporations resident in Canada.

Example 1

Canco borrows money from a bank, and contributes the proceeds to a foreign affiliate corporation (FA1) that is resident in a country with which Canada has a tax treaty, in exchange for shares of FA1. FA1 uses the funds to make a loan to another foreign affiliate corporation (FA2), which is 100 percent owned by Canco. The loan by FA1 to FA2 is an inter-affiliate loan.

Canco's interest expense on the bank loan will be a specified financing expense, because it is reasonable to consider that the borrowed money was used to fund the inter-affiliate loan.

Example 2

Canco owns 100 % of the shares of Cansub 1 and Cansub 2. Cansub 1 borrows from a bank, and uses the proceeds of the borrowing to purchase an asset from Cansub 2. Cansub 2 then uses its proceeds of disposition of the asset to fund an inter-affiliate loan. Cansub 1 incurs interest expense on the bank loan for the taxation year.

The funds borrowed by Cansub 1 are considered to be used for the purpose of funding the inter-affiliate loan.

Example 3

Canco purchases all the shares of Cansub from a third-party in exchange for an interest-bearing note. Immediately following the purchase, Canco sells all the assets of Cansub for cash and uses the proceeds to fund an inter-affiliate loan.

Although the inter-affiliate loan is funded by the proceeds of disposition from the sale of assets, the shares of the company that owned the assets were acquired by means of the interest-bearing note and so it is reasonable to consider that property of the company was substituted for property that was used to fund the inter-affiliate loan.

Example 4

Canco borrows from a bank to purchase stock of Cansub from a third-party. Cansub has an existing inter-affiliate loan. So long as there is no connection, through a series of transactions or otherwise, between the payment for the shares and the existence of the inter-affiliate loan (such a connection might be found if, for example, the seller had invested additional funds in Cansub in contemplation of the sale, so that Cansub could fund the inter-affiliate loan) the proceeds of the borrowing are not considered to be used to fund the inter-affiliate loan.

Aggregate double-dip income – related parties

ITA
18.2(4) to (7)

New subsections 18.2(4) to (7) of the Act require a corporation (in these subsections referred to as the debtor corporation) that has a specified financing expense in respect of an inter-affiliate loan for a year, but does not have aggregate double-dip income in respect of that inter-affiliate loan, to be allocated any aggregate double-dip income of a related corporation in respect of the inter-affiliate loan to which the specified financing expense relates. This situation will arise where the interest paid on the inter-affiliate loan accrues to the benefit of a corporation other than the corporation that has incurred the specified financing expense. In that situation the aggregate double-dip income of the related corporation will be treated as aggregate double-dip income of the debtor corporation and not as aggregate double-dip income of the other corporation.

Where these provisions apply to more than one related corporation in respect of a debtor corporation, the debtor corporation may choose the manner in which the double-dip income is allocated; however, if the debtor corporation fails to allocate, or if the manner in which the double-dip income is allocated results in one of the related corporations continuing to have an amount of aggregate double-dip income while the debtor corporation continues to have an outstanding specified financing expense, the Minister of National Revenue may determine the manner in which the excess double dip income is allocated.

Inter-affiliate loans - exceptions

ITA
18.2(8)

New subsection 18.2(8) of the Act provides two exceptions to the definition of inter-affiliate loan. The first is a "same-country" exception. It applies where the borrower and lender in respect of what would, but for the application of this subsection, be an inter-affiliate loan, do not deal with other at arm's length, are resident in the same country, and determine their income for income tax purposes under the income tax laws of that country on a consolidated or combined basis. This exception recognizes that where companies are members of the same consolidated group for tax purposes, intra-group transactions are generally disregarded.

The second exception under new subsection 18.2(8) relates to the normal course operations of financial institutions. Specifically, this exception applies to a loan made between affiliates of corporation that is a regulated financial institution, where the loan is held and issued in the ordinary course of a business carried on by each of them as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country in which the businesses are principally carried on. Provided the terms of the loan are substantially the same as the terms and conditions of similar loans entered into between persons dealing at arm's length, it will not be an inter-affiliate loan.

Partnerships

ITA
18.2(9)

Where a partnership owns (either directly or indirectly) a share of a specified corporation (defined in new subsection 18.2(10) of the Act) and the partnership has borrowed money or has become liable for an amount payable (in this subsection referred to as the partnership indebtedness), the interest in respect of which is deductible under paragraph 20(1)(*c*), then new subsection 18.2(9) of the Act deems the following to occur in respect of each corporation or partnership that is a member of the partnership:

(a) An amount equal to the member's specified proportion (defined in new subsection 18.2(10) of the Act) of the expense related to the partnership indebtedness is added to the income of the member.

(b) An amount equal to the amount added to the member's income is deemed to be an amount of interest or other borrowing cost, as the case may be, paid or payable by the member.

(c) The member is deemed to have incurred its specified proportion of the partnership indebtedness, and to use the proceeds or property acquired in respect of that indebtedness in the same manner as the partnership.

If these deeming rules cause a corporation to be treated as having incurred its share of a partnership's indebtedness, the new rules regarding double-dip interest will apply generally. Where the rules apply to a member of a partnership that is itself a partnership, the double-dip interest rules will not generally have any direct application to the member itself; instead, subsection 18.2(9) will apply to its own members in turn.

Partnership definitions

ITA
18.2(10)

New subsection 18.2(10) of the Act contains two definitions relevant to the operation of the rules for partnerships. The first is the new definition "specified corporation" which, in respect of a partnership, means a corporation that is a foreign affiliate of a member of the partnership, a foreign affiliate of a person with whom the partnership does not deal at arm's length, or a foreign affiliate of a person that does not deal at arm's length with a member of the partnership.

The second definition is the "specified proportion" of a member of a partnership for a fiscal period of the partnership. This means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period. For the purpose of this definition, if that income or loss for a period is nil, the proportion is computed as if the partnership had $1,000,000 of income for that period.

Clause 4

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
19(5)

This amendment is consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 55 for more information.

Clause 5

Deductions permitted in computing income from business or property

ITA
20

Section 20 of the Act permits the deduction of certain amounts in computing a taxpayer's income for a taxation year from a business or property.

Recapture of investment tax credits – child care space amount

ITA
20(1)(*nn.1*)

New paragraph 20(1)(*nn.1*) of the Act is added consequential to the introduction of investment tax credits for the creation of child care spaces in subsection 127(9) of the Act. Paragraph 20(1)(*nn.1*) permits a deduction of amounts that are recaptured (other than an amount recaptured because of a disposition of a depreciable property) and included in a taxpayer's Part I tax in a preceding taxation year under new subsection 127(27.1) or (28.1) in respect of a child care space amount. New paragraph 20(1)(*nn.1*) applies on and after March 19, 2007.

Double dips – consequential amendment

ITA
20(3)

Subsection 20(3) of the Act is updated to include a reference to new section 18.2 of the Act. This amendment applies on and after March 19, 2007.

Clause 6

Taxable capital gain – donation of listed securities

ITA
38(*a.1*)

Paragraph 38(*a.1*) of the Act provides that where a capital gain results from the making of a gift of certain publicly traded securities to a qualified donee (other than a private foundation), no portion of the capital gain in respect of such a gift is included in computing a taxpayer's taxable capital gains. Paragraph 38(*a.1*) is amended to extend the capital gains exemption for such gifts, made on or after March 19, 2007, to private foundations.

Excluded from this beneficial treatment are donations to a non-qualifying private foundation – in general terms, one that has not complied with certain time-specific limits on its corporate holdings. For additional details regarding the excess corporate holdings regime for private foundations, refer to the commentary for the definitions "excess corporate holdings percentage" and "non-qualifying private foundation" in section 149.1 of the Act.

The language of the paragraph is also updated consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 55 for more information.

Clause 7

Adjusted cost base of partnership interest

ITA
53

Subsection 53(1) of the Act sets out a number of amounts that are added, in computing a taxpayer's adjusted cost base of a property at a particular time, to the taxpayer's cost of the property. Subsection 53(2) sets out amounts that are similarly deducted.

New subparagaph 53(1)(*e*)(xiiv) provides an increase in a taxpayer's adjusted cost base of an interest in a partnership, equal to the amount of the taxpayer's taxable earnings base adjustment (newly defined in subsection 18.2(1) of the Act) in respect of an interest in the partnership.

New subparagraph 53(2)(*c*)(xii) provides a reduction in a taxpayer's adjusted cost base of an interest in a partnership equal to the lesser of two amounts. The first of these is the total of all amounts each of which is the amount of a dividend that is included in computing the income of the taxpayer under section 93.1 in respect of the partnership for a taxation year that ended before that time. The second amount is the total of the amounts deducted by the taxpayer in respect of dividends on shares under subsection 91(5.2), and twice the amount deducted under subsection 91(5.3) in respect of a disposition of those shares.

These new subparagraphs apply after 2011.

Clause 8

Scholarships and bursaries

ITA
56(3)

Subsection 56(3) of the Act provides an annual exemption for scholarship, fellowship or bursary amounts received by an individual in connection with the individual's enrolment at a designated educational institution in a program in respect of which the individual may claim the education tax credit (the ETC) in the taxation year in which the amount was received.

Currently, the exemption applies only in the year in which an individual may claim the ETC. Paragraph 56(3)(*a*) is amended to provide that the exemption will also be available if the scholarship, fellowship or bursary is received in the year immediately preceding or following the year in which the individual could claim the ETC.

Paragraph 56(3)(*a*) is also amended to provide an annual exemption for a scholarship or bursary received by an individual in connection with the individual's enrolment in an elementary or secondary school.

These amendments apply to the 2007 and subsequent taxation years.

Clause 9

Repayment under Canada Education Savings Act

ITA
60(*x*)

Paragraph 60(*x*) of the *Income Tax Act* provides a deduction for an amount repaid by a taxpayer under the *Canada Education Savings Act* or under a similar provincial program administered under that Act to the extent that the amount was previously included in the taxpayer's income because of subsection 146.1(7) of the *Income Tax Act*. Subsection 146.1(7) provides for an income inclusion for educational assistance payments paid out of registered education savings plans.

Paragraph 60(*x*) is amended to extend the deduction to an amount repaid under a prescribed program. This is accomplished by replacing the reference to a program administered pursuant to an agreement entered into under the *Canada Education Savings Act* with a reference to a designated provincial program. The expression "designated provincial program" is defined in subsection 146.1(1) of the *Income Tax Act* as a program administered pursuant to an agreement entered into under the *Canada Education Savings Act* or a prescribed program. It is intended that the education savings incentive program proposed by the Government of Quebec in its 2007 budget be prescribed for this purpose.

This amendment applies to the 2007 and subsequent taxation years.

Clause 10

Canadian and foreign exploration and development expenses

ITA
66

Section 66 of the Act provides rules in respect of Canadian and foreign exploration and development expenses.

ITA
66(15)

Subsection 66(15) contains various definitions for the purposes of section 66.

"principal-business corporation"

A "principal-business corporation" is defined in subsection 66(15) as a corporation whose principal business is any of, or a combination of, a number of activities specified in the definition. In addition, a corporation is a principal-business corporation if all or substantially all of its assets are shares in the capital stock of one or more other related corporations the principal businesses of which consist of such activities.

Paragraphs (*h*) and (*i*) of the definition "principal-business corporation" in subsection 66(15) are amended to include references to new Class 43.2 in Schedule II to the *Income Tax Regulations* (the Regulations). This change ensures that the definition of "principal-business corporation" includes a corporation whose principal business is the generation of energy using Class 43.1 or 43.2 property and the development of projects where it is reasonably expected that at least 50 per cent of the capital cost of the depreciable property to be used in each project would be the capital cost of Class 43.1 or 43.2 property. Class 43.2 was introduced by the 2005 Budget. These amendments to paragraphs (*h*) and (*i*) of the definition "principal-business corporation" in subsection 66(15) apply to property acquired on and after February 23, 2005, which is consistent with the announcement date of the 2005 Budget.

Clause 11

Expenses for food, etc.

ITA
67.1

Section 67.1 of the Act provides a general limitation on the amount that may be deducted in respect of the human consumption of food or beverages or the enjoyment of entertainment, limiting an otherwise deductible amount to 50 per cent of the expense.

Expenses for food, etc.

ITA
67.1(1)

Subsection 67.1(1) of the Act provides that the amount of expenses in respect of human consumption of food, beverages or the enjoyment of entertainment that are recognized for the purposes of the Act is 50 per cent of the lesser of the actual expenses and the amounts that would be reasonable in the circumstances. Subsection 67.1(1) is amended consequential to the enactment of special rules that are to apply to the meal expenses of long-haul truck drivers during their eligible travel periods. These rules are described in more detail in the notes accompanying new subsections 67.1(1.1) and (5). This change applies to expenses incurred on or after March 19, 2007.

Expenses for food and beverages of long-haul truck drivers

ITA
67.1(1.1)

In general, the amount paid or payable by a long-haul truck driver during an eligible travel period is deemed to be a specified percentage of the amount instead of the 50 per cent of the amount otherwise deemed in subsection 67.1(1) of the Act. The specified percentage is 60 per cent after March 18, 2007 and before 2008, 65 per cent in 2008, 70 per cent in 2009, 75 per cent in 2010 and 80 per cent after 2010. This change applies to expenses incurred on or after March 19, 2007. The related definitions are described in the notes to new subsection 67.1(5).

Definitions

ITA
67.1(5)

New subsection 67.1(5) of the Act introduces definitions as a consequence of the introduction of a specified percentage in subsection 67.1(1.1) in respect of the meal expenses of long-haul truck drivers. The definitions are as follows:

"eligible travel period"

An eligible travel period in respect of a long-haul truck driver is a period of at least 24 continuous hours during which the driver is away from the municipality or metropolitan area where the specified place in respect of the driver is located. In addition, the driver's absence from the specified place must be for the purpose of driving a long-haul truck that transports goods to, or from, a location that is beyond a radius of 160 kilometres from the specified place.

"long-haul truck"

A long-haul truck means a truck or a tractor that is designed for hauling freight and that has a gross vehicle weight rating (as that term is defined in subsection 2(1) of the *Motor Vehicle Safety Regulations*) of more than 11,788 kilograms.

"long-haul truck driver"

A long-haul truck driver is an individual whose principal business or principal duty of employment is driving a long-haul truck that transports goods.

"specified place"

A specified place is, in the case of an employee, the place at which the employer's establishment to which the employee ordinarily reports to work is located. In the case of an individual whose principal business is to drive a long-haul truck to transport goods, the specified place is the place where the individual resides.

"specified percentage"

The specified percentage in respect of an amount paid or payable is,

- 60 per cent, if the amount is paid or becomes payable on or after March 19, 2007 and before 2008;
- 65 per cent, if the amount is paid or becomes payable in 2008
- 70 per cent, if the amount is paid or becomes payable in 2009
- 75 per cent, if the amount is paid or becomes payable in 2010; and
- 80 per cent, if the amount is paid or becomes payable after 2010.

These definitions apply in respect of amounts that are paid, or become payable, on or after March 19, 2007.

Clauses 12 & 13

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
80(1) and 89(1)

These amendments are consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 55 for more information.

Clause 14

Foreign affiliate income

ITA
91

Section 91 of the Act provides rules for determining amounts that a taxpayer resident in Canada is to include in computing its income for a taxation year as income from a share of a controlled foreign affiliate.

New subsection 91(5.1) provides a deduction, in computing a corporation's income for a taxation year, in respect of dividends received by the corporation out of the taxable surplus of a foreign affiliate. This new deduction – which is available only where subsection 91(5) does not provide a deduction in respect of the dividend – is the lesser of two amounts. The first is the amount (if any) by which the portion of a dividend that was paid out of taxable surplus exceeds any deduction available in respect of the dividend under paragraph 113(1)(*b*). The second is the amount of any increase under subsection 92(1)(*a*)(ii) in the adjusted cost base of the share in respect of which the dividend was paid.

New subsection 91(5.2) provides a deduction, in computing a corporation's income for a taxation year, in respect of any dividend paid by a foreign affiliate out of taxable surplus, where the corporation is deemed by section 93.1 of the Act to have received the dividend. The deduction is equal to the lesser of two amounts. The first of these amounts is the amount of the dividend less any amount deductible under paragraph 113(1)(*b*) of the Act in respect of that dividend. The second amount is the excess of any additions, under subparagraph 53(1)(*e*)(xiv) of the Act, to the corporation's adjusted cost base of the partnership interest through which the dividend is received over the amounts deducted from that adjusted cost base under subparagraph 53(2)(*c*)(xiii) of the Act.

New subsection 91(5.3) provides a deduction in computing the income of a taxpayer that is a member of a partnership, if the partnership has realized a capital gain on the disposition of a share of the capital stock of a corporation. The deduction is equal to the lesser of two amounts. The first amount is one half of the taxpayer's specified proportion (newly defined in subsection 18.2(1)) of the Act) of that capital gain. The second amount is the amount by which the taxpayer has, under subparagraph 53(1)(*e*)(xiv) of the Act, increased its adjusted cost base of its interest in the partnership except to the extent that that adjusted cost base has been reduced under subparagraph 53(2)(*c*)(xiii) of the Act.

These new subsections apply after 2011.

Clause 15

Adjusted cost base of share of foreign affiliate

ITA
92(1)

Subsection 92(1) of the Act provides additions and deductions that apply in computing, at any time in a taxation year, the adjusted cost base to a taxpayer resident in Canada of any share owned by the taxpayer of the capital stock of a foreign affiliate of the taxpayer. Paragraph 92(1)(*a*) is amended to add in computing that adjusted cost base the taxable earnings base adjustment (as newly defined by subsection 18.2(1)) of the taxpayer in respect of the share for that or any preceding taxation year. Similarly, paragraph 92(1)(*b*) is amended to deduct, in computing a foreign affiliate share's adjusted cost base, amounts deducted under new subsection 91(5.1) in computing the taxpayer's income.

Amended subsection 92(1) applies after 2011.

Clause 16

Foreign affiliates

ITA
95

Section 95 of the Act defines a number of terms and provides rules relating to the taxation of resident shareholders of foreign affiliates.

Global Section 95 Election

In this set of proposals, there are a number of amendments to section 95 of the Act that apply to taxation years, of a foreign affiliate of a taxpayer, that begin or end after various specified dates. However, where a taxpayer so elects in writing and files the election (referred to in this commentary as the "Global Section 95 Election") with the Minister of National Revenue before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, the following results occur:

First, where the Global Section 95 Election is so made by the taxpayer, the following amendments to the Act apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994:

- paragraphs (*a*), (*c*) and (*c.1*) of the definition "excluded property" in subsection 95(1),
- paragraphs (*b*) and (*c*) of the definition "investment business" in subsection 95(1),
- paragraphs 95(2)(*g.01*) and (*g.02*),
- paragraph 95(2)(*i*),
- paragraphs 95(2)(*o*) to (*t*) and (*z*),
- paragraph 95(2.1)(*c*),
- subsections 95(2.41) and (2.42), and
- paragraph 95(3)(*d*).

Second, new subparagraph 95(2)(*a*)(i) of the Act, given the transitional reading described in the commentary to that provision, also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000, except that, for those taxation years, the operator in Case 1 (described in that commentary) must be a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year.

Third, clauses 95(2)(*a*)(ii)(A) to (C) and (E) of the Act and subparagraphs 95(2)(*a*)(v) and (vi) of the Act, given the transitional reading described in the commentary to those provisions, also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000, except that the references to "income or loss" in that subparagraph 95(2)(*a*)(v) and the preamble of that subparagraph 95(2)(*a*)(vi), as those subparagraphs apply to those taxation years of a foreign affiliate of the taxpayer, shall be replaced by a reference to "income".

Fourth, new paragraph 95(2)(*g*), given the transitional reading described in the commentary to that paragraph, also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and before December 21, 2002.

This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take the Global Section 95 Election into account.

The making of the Global Section 95 Election by the taxpayer will also invoke the early application of a number of amendments to the Regulations so that they apply to taxation years, of foreign affiliates of the taxpayer, that begin after 1994, including the following:

- paragraph (*b*) of the definition "earnings" in subsection 5907(1) of the Regulations,
- paragraph (*b*) of the definition "exempt deficit" in subsection 5907(1),
- paragraph (*a.1*) of the definition "exempt earnings" in subsection 5907(1),
- subparagraph (*d*)(ii) of the definition "exempt earnings" in subsection 5907(1),
- the preamble, paragraph (*c*), and the postamble, of the definition "exempt loss" in subsection 5907(1),
- the definition "loss" in subsection 5907(1),
- subparagraph (*d*)(i) of the definition "net earnings" in subsection 5907(1),
- subparagraph (*d*)(i) of the definition "net loss" in subsection 5907(1),
- paragraph (*b*) of the definition "taxable deficit" in subsection 5907(1),
- subparagraphs (*b*)(iv) and (v) of the definition "taxable loss" in subsection 5907(1), and
- paragraphs 5907(2.7)(*a*) and (*b*) of the Regulations.

A draft version of these amendments to the Regulations was provided in the foreign affiliate proposals released on February 27, 2004. A revised draft version of these amendments to the Regulations will subsequently be released and will include changes to accord with new draft paragraph 95(2)(*a*) of the Act in the current set of proposals (including transitional readings of that paragraph).

Note that this set of proposals provides for the possibility of a total revocation of the Global Section 95 Election. If a taxpayer has made what would otherwise be a valid Global Section 95 Election, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which the amending legislation enacting this set of proposals receives Royal Assent, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed never to have been made. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take the revocation into account.

Definitions

ITA
95(1)

Subsection 95(1) of the Act defines a number of terms for the purposes of subdivision i of Division B of Part I of the Act that are used in connection with the rules dealing with the taxation of resident shareholders of foreign affiliates.

"active business"

"Active business", of a foreign affiliate of a taxpayer is defined as any business carried on by the affiliate other than

- a business that is an investment business carried on by the affiliate, or
- a business that is deemed by subsection 95(2) to be a separate business other than an active business carried on by the affiliate.

The definition "active business" is amended to also exclude a non-qualifying business of a foreign affiliate of a taxpayer from being an active business of the foreign affiliate. "Non-qualifying business" is newly defined in subsection 95(1).

This amendment applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

"calculating currency"

The new definition "calculating currency" in subsection 95(1) of the Act is relevant for proposed new paragraph 95(2)(*f.2*) and the new definitions "calculating currency exchange rate" and "transitional exchange rate" in subsection 95(1).

"Calculating currency", for a taxation year of a foreign affiliate of a taxpayer resident in Canada, is defined to mean

- the currency of the country in which the foreign affiliate is resident throughout the taxation year, or
- such other currency that the taxpayer establishes to be reasonable in the circumstances.

This new definition applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1994.

"calculating currency exchange rate" and "Canadian currency exchange rate"

The new definitions "calculating currency exchange rate" and "Canadian currency exchange rate" in subsection 95(1) of the Act are relevant for proposed new paragraph 95(2)(*f.2*).

"Calculating currency exchange rate", on a particular day in respect of the exchange of a currency (referred to as the "other currency") other than the calculating currency of the foreign affiliate for the calculating currency of the taxpayer for a taxation year, is defined to mean the rate of exchange (quoted by the Bank of Canada at noon on the particular day) for the exchange of a unit of the other currency for a unit of the calculating currency of the taxpayer.

"Canadian currency exchange rate", on a particular day in respect of the exchange of a currency (referred to as the "other currency") other than Canadian currency for Canadian currency, is defined to mean the rate of exchange (quoted by the Bank of Canada at noon on the particular day) for the exchange of a unit of the other currency for a unit of Canadian currency.

These new definitions apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1994.

"controlled foreign affiliate"

In subsection 95(1) of the Act, a "controlled foreign affiliate", at any time, of a taxpayer is defined to mean a foreign affiliate of the taxpayer that is, at that time, controlled by

- the taxpayer,
- the taxpayer and not more than four other persons resident in Canada,
- not more than four persons resident in Canada, other than the taxpayer,
- a person or persons with whom the taxpayer does not deal at arm's length, or
- the taxpayer and a person or persons with whom the taxpayer does not deal at arm's length.

The definition "controlled foreign affiliate" is amended to provide that a "controlled foreign affiliate", at any time, of a taxpayer resident in Canada means

- a foreign affiliate of the taxpayer that is, at that time, controlled by the taxpayer (paragraph (*a*) of the definition),
- a foreign affiliate of the taxpayer that would, at that time, be controlled by the taxpayer if the taxpayer owned
    1. all of the shares of the capital stock of the foreign affiliate that are owned at that time by the taxpayer,
    2. all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with the taxpayer,

3. all of the shares of the capital stock of the foreign affiliate that are owned at that time by the persons (each of whom is referred to in this definition as a "relevant Canadian shareholder"), in any set of persons not exceeding four (which set of persons shall be determined without reference to the existence of or the absence of any relationship, connection or action in concert between those persons), who
    - are resident in Canada,
    - are not the taxpayer or a person described in 2, and
    - own, at that time, shares of the capital stock of the foreign affiliate, and
4. all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with any relevant Canadian shareholder (paragraph (*b*) of the definition), or

- a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of proposed paragraph 94.1(2)(*h*) (paragraph (*c*) of the definition).

In determining the aforementioned set of persons, if there is a set of persons that would result in control in Canada and a set of persons that would not result in control in Canada, the set that would result in control in Canada is to be selected.

With respect to the application of paragraph (*b*) of the definition "controlled foreign affiliate", note the rules in proposed new sections 95(2.01) and (2.02). For more detail, please refer to the commentaries for those sections.

The new definition "controlled foreign affiliate" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1995. However, there are two transitional rules.

The first such transitional rule is that, for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before February 27, 2004, the definition "controlled foreign affiliate" is to be read as follows:

> "controlled foreign affiliate", at any time, of a taxpayer resident in Canada means
>
> - a foreign affiliate of the taxpayer that is, at that time, controlled
>   1. by the taxpayer,
>   2. by the taxpayer and not more than four other persons resident in Canada, or
>   3. by not more than four persons resident in Canada, other than the taxpayer,
> - a foreign affiliate of the taxpayer that would, at that time, be controlled by the taxpayer if the taxpayer owned
>   1. all of the shares of the capital stock of the foreign affiliate that are owned at that time by the taxpayer,
>   2. all of the shares of the capital stock of the foreign affiliate that are owned at that time by any person who does not deal at arm's length with the taxpayer,
>   3. all of the shares of the capital stock of the foreign affiliate that are owned at that time by the persons (each such person being referred to as a "relevant Canadian shareholder"), in any set of persons not exceeding four (which set of persons shall be determined without reference to the existence of or the absence of any relationship, connection or action in concert between those persons), who
>   - are resident in Canada,
>   - are not the taxpayer or any person that does not deal at arm's length with the taxpayer, and
>   - own, at that time, shares of the capital stock of the foreign affiliate, and

  4. all of the shares of the capital stock of the foreign affiliate that are owned at that time by persons who do not deal at arm's length with any relevant Canadian shareholder, or

- a foreign affiliate of the taxpayer that is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(*h*).

The second such transitional rule is that, for taxation years, of a foreign affiliate of a taxpayer, that begin after 1995 and before 2003, that definition is to be read as follows:

> "controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that
>
> - is, at that time, controlled
>   1. by the taxpayer,
>   2. by the taxpayer and not more than four other persons resident in Canada, or
>   3. by not more than four persons resident in Canada, other than the taxpayer, or
> - would, at that time, be controlled by the taxpayer if the taxpayer owned
>   1. each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any of not more than four other persons resident in Canada,
>   2. each share of the capital stock of a corporation that is owned at that time by any of not more than four persons resident in Canada (other than the taxpayer), or
>   3. each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any person with whom the taxpayer does not deal at arm's length.

"designated acquired corporation"

The new definition "designated acquired corporation" in subsection 95(1) of the Act is relevant for the new definition "relevant non-arm's length entity" in that subsection.

For detail about the new definition "designated acquired corporation" and its coming-into-force dates, refer to the commentary for the definition "relevant non-arm's length entity" in subsection 95(1).

"designated taxable Canadian property"

The new definition "designated taxable Canadian property" in subsection 95(1) of the Act is relevant for new paragraphs 95(2)(*f*) and (*f.1*).

"Designated taxable Canadian property", at any time, of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to as the "holder") is defined to mean a taxable Canadian property in respect of which, if it were disposed of at that time by the holder, the foreign affiliate's portion of the holder's capital gain or income (if there were such a capital gain or income) from the disposition would

- be included in computing the foreign affiliate's taxable income earned in Canada under subparagraph 115(1)(*a*)(ii) or (iii) of the Act, and
- not be exempt, because of a tax treaty with a country, from tax under Part I of the Act.

This new definition applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1994. However, as the definition "tax treaty" in subsection 248(1) is applicable to the 1998 and subsequent taxation years, there is a transitional version of the new definition "designated taxable Canadian property" to ensure that, in applying that new definition for the 1997 and preceding taxation years of all foreign affiliates of the taxpayer, the references in it to "a tax treaty with a country" are read as references to "a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of another country, which has the force of law in Canada at that time".

"eligible trust"

The new definition "eligible trust" in subsection 95(1) of the Act is relevant for the new definition "exempt trust" in that subsection.

"Eligible trust", at any time, is defined to mean a trust, other than a trust

- created or maintained for charitable purposes,
- governed by an employee benefit plan,
- described in paragraph (*a.1*) of the definition "trust" in subsection 108(1),
- governed by a salary deferral arrangement,
- operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits, or
- where the amount of income or capital that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power.

This new definition applies after February 27, 2004.

"entity"

Under this new definition in subsection 95(1) of the Act, an entity is defined as including an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust.

This new definition applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 1994.

"excluded property"

The definition "excluded property" in subsection 95(1) of the Act is relevant for the purposes of computing the foreign accrual property income (FAPI) and the tax surpluses and deficits of a foreign affiliate of a taxpayer. Under the definition "foreign accrual property income" in subsection 95(1), capital gains and losses from the disposition of excluded property are disregarded in computing FAPI except in the circumstances set out in the description of B in the definition of FAPI.

Paragraph (*a*) of the definition "excluded property", at a particular time, of a foreign affiliate of a taxpayer provides that any property used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business is excluded property under that definition. Paragraph (*a*) of the definition is amended to clarify that a property does not meet the requirements of that paragraph unless that active business is an active business carried on by the foreign affiliate.

Paragraph (*b*) of that definition provides that shares owned by a foreign affiliate of a taxpayer of the capital stock of another foreign affiliate of the taxpayer are excluded property if all or substantially all of the property of the other foreign affiliate is excluded property. Paragraph (*b*) of that definition is amended to clarify that shares owned by the foreign affiliate of the capital stock of another foreign affiliate of the taxpayer do not meet the requirements of that paragraph unless all or substantially all of the fair market value of the property of the other foreign affiliate is attributable to property of that other foreign affiliate that is excluded property.

Paragraph (*c*) of that definition provides that an amount receivable is excluded property of a foreign affiliate of a taxpayer if the interest on the amount receivable is, or would be if interest were payable on the amount receivable, income from an active business because of subparagraph 95(2)(*a*)(ii). Paragraph (*c*) of that definition is amended to broaden the meaning of "excluded property" to include property all or substantially all of the income from which is (or would be, if there were income from the property) income from an active business (which, for this purpose, includes income that would be deemed to be income from an active business by amended paragraph 95(2)(*a*) if that paragraph were read without reference to its subparagraph (v). For additional information, please refer to the commentary to paragraph 95(2)(*a*).

New paragraph (*c.1*) is added to the definition "excluded property" to include property arising under or as a result of an agreement that

- provides for the purchase, sale or exchange of currency, and
- either
  - can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to an amount that was receivable under an agreement that relates to the sale of excluded property or with respect to an amount that was receivable and was a property described in paragraph (*c*), of fluctuations in the value of the currency in which the amount receivable was denominated, or
  - can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to a described amount, of fluctuations in the value of the currency in which that amount was denominated.

A described amount is an amount that meets one of the following three descriptions.

First, a described amount may be an amount that was payable under an agreement that relates to the purchase of property that (at all times between the time of the acquisition of the property and the particular time) is excluded property of the affiliate.

Second, a described amount may be an amount of indebtedness, to the extent that the proceeds derived from the issuance or incurring of the indebtedness can reasonably be considered to have been used to acquire property that (at all times between the time of the acquisition of that property and the particular time) is excluded property of the affiliate.

Third, a described amount may be an amount of indebtedness, to the extent that the proceeds derived from the issuance or incurring of the indebtedness can reasonably be considered to have been used to repay the outstanding balance of

1. an amount that, immediately before the time of that repayment, is described by the first description of described amount,
2. an amount of indebtedness of the affiliate that, immediately before the time of that repayment, is described by the second description of described amount, or
3. an amount of indebtedness of the affiliate that, immediately before the time of that repayment, is described by this third description of described amount.

New paragraph (*c.1*) of the definition "excluded property" will, for example, address a situation where the affiliate enters into an agreement (the "sale agreement"), relating to the sale of excluded property, in which the amount receivable under the sale agreement is denominated in a currency other than the affiliate's calculating currency, and then, in order to reduce the affiliate's risk of fluctuations in the value of the currency in which the amount receivable under the sale agreement is denominated, enters into a currency hedging agreement with respect to all or a portion of that amount receivable. In such a situation, new paragraph (*c.1*) ensures that the income or loss from that hedge receives the same income characterization as the income or loss from the property being hedged; i.e., the income or loss from that hedge is considered to be income or loss from the sale of excluded property.

New paragraphs (*a*), (*c*) and (*c.1*) of the definition "excluded property" apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Those paragraphs are part of the Global Section 95 Election package described at the beginning of the commentary to section 95.

New paragraph (*b*) of the definition "excluded property" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

"exempt trust"

The new definition "exempt trust" in subsection 95(1) of the Act is relevant for new subsection 95(2.01).

"Exempt trust", at a particular time in respect of a taxpayer resident in Canada, is defined to mean a trust that, at that time, is a trust under which the interest of each beneficiary under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

- the trust is an eligible trust,
- there are at least 150 beneficiaries each of whom holds a specified fixed interest, in the trust, that has a fair market value of at least $500, and
- the total of all amounts each of which is the fair market value of an interest as a beneficiary under the trust held by a specified purchaser in respect of the taxpayer resident in Canada is not more than 10 per cent of the total fair market value of all interests as a beneficiary under the trust.

Note that the terms "specified fixed interest", "eligible trust", "specified fixed interest" and "specified purchaser" are newly defined in subsection 95(1).

This new definition applies after February 27, 2004.

"foreign accrual property income"

The definition "foreign accrual property income" in subsection 95(1) of the Act is relevant for the purposes of section 91 of the Act and for the purposes of computing the tax surpluses and deficits of the foreign affiliate of a taxpayer. Section 91 provides rules for determining amounts that a taxpayer resident in Canada is to include in computing the taxpayer's income for a particular year as income from a share of a controlled foreign affiliate of the taxpayer.

First, the description of A in the definition "foreign accrual property income" is amended to also include the affiliate's income for the year from a non-qualifying business of the affiliate. The term "income from a non-qualifying business" is newly defined in subsection 95(1).

Second, the description of D in the definition "foreign accrual property income" is amended to also include the affiliate's loss for the year from a non-qualifying business of the affiliate. In this regard, refer to the new definition "income from a non-qualifying business" in subsection 95(1) and also to new paragraph 95(2)(*x*).

Third, the description of E in the definition "foreign accrual property income" is amended to remove the reference to dispositions of excluded property to which none of paragraphs 95(2)(*c*), (*d*) or (*e*) apply, and replace it with a reference to dispositions of excluded property.

The amendments to the descriptions of A and D in the definition "foreign accrual property income" apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

The amendments to the description of E in the definition "foreign accrual property income" apply to taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

"income from an active business"

"Income from an active business" of a foreign affiliate of a taxpayer for a taxation year is defined as including, for greater certainty, any income of the affiliate for the year that pertains to or is incident to that active business but not including

- other income that is its income from property for the year, or

- its income for the year from a business that is deemed by subsection 95(2) of the Act to be a business other than an active business carried on by the affiliate.

This definition is amended so that "income from an active business" of a foreign affiliate of a taxpayer for a taxation year is defined as including the foreign affiliate's income for the taxation year that pertains to or is incident to that active business but not including

- the foreign affiliate's income from property for the taxation year,
- the foreign affiliate's income for the taxation year from a business that is deemed by subsection 95(2) to be a business other than an active business of the foreign affiliate, or
- the foreign affiliate's income from a non-qualifying business of the foreign affiliate for the taxation year.

The expression "non-qualifying business" is newly defined in subsection 95(1).

This amendment applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

"income from a non-qualifying business"

"Income from a non-qualifying business" of a foreign affiliate of a taxpayer resident in Canada for a taxation year is defined as including the foreign affiliate's income for the taxation year that pertains to or is incident to that non-qualifying business, but not including

- the foreign affiliate's income from property for the taxation year, or
- the foreign affiliate's income for the taxation year from a business that is deemed by subsection 95(2) to be a business other than an active business of the foreign affiliate.

"Non-qualifying business" is newly defined in subsection 95(1).

The new definition "income from a non-qualifying business" applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

"income from property"

"Income from property" of a foreign affiliate of a taxpayer for a taxation year is defined as including the foreign affiliate's income for the taxation year from an investment business and the foreign affiliate's income for the taxation year from an adventure or concern in the nature of trade, but, for greater certainty, not including the foreign affiliate's income for the taxation year that is, because of subsection 95(2) of the Act, included in its income from an active business or in its income from a business other than an active business.

This definition is amended to define "income from property" of a foreign affiliate of a taxpayer for a taxation year as including the foreign affiliate's income for the taxation year from an investment business and the foreign affiliate's income for the taxation year from an adventure or concern in the nature of trade, but not including

- the foreign affiliate's income for the taxation year from a business that is deemed by subsection 95(2) to be a business other than an active business of the foreign affiliate, or
- the foreign affiliate's income for the taxation year that pertains to or is incident to an active business, or a non-qualifying business, of the foreign affiliate.

The new definition applies to taxation years, of a foreign affiliate of a taxpayer, that end after 2008.

"investment business"

The definition "investment business" in subsection 95(1) of the Act is relevant for the purposes of the definitions "income from property" and "foreign accrual property income" in that subsection.

Under the definition "investment business", the investment business of a foreign affiliate of a taxpayer means, in general, a business carried on by the affiliate the principal purpose of which is to derive income from property, income from the insurance or reinsurance of risks, income from the factoring of trade accounts receivable, or profits from the disposition of investment property, unless it is established that the business meets the requirements of paragraphs (*a*) and (*b*) of that definition. A business that is deemed under subsection 95(2) to be a business other than an active business carried on by the affiliate is also excluded from the definition.

Paragraph (*a*) of the definition "investment business" requires that the foreign affiliate conduct the business principally with arm's length persons and that the business be either

- carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country in which the business is principally carried on (subparagraph (*a*)(i) of the definition), or
- the development of real estate for sale, the lending of money, the leasing or licensing of property or the insurance or reinsurance of risks (subparagraph (*a*)(ii) of the definition).

In general terms, paragraph (*b*) of the definition requires that the foreign affiliate or (as described in the preamble to paragraph (*b*) of the definition, where the affiliate carries on the business as a member, other than a "specified member" (as defined in subsection 248(1) of the Act), of a partnership), the partnership

- employs more than five employees full time in the active conduct of the business (subparagraph (*b*)(i) of the definition), or
- employs the equivalent of more than five employees in the active conduct of the business, taking into account only services provided by the employees of the affiliate and services provided outside Canada by employees of qualifying employers, i.e., employees of
    - a corporation related to the affiliate (clause (*b*)(ii)(A) of the definition), or
    - members of the partnership, other than a "specified member" of the partnership (clause (*b*)(ii)(B) of the definition).

In this regard, note that a "specified member" of a partnership in a fiscal period of the partnership is generally defined in subsection 248(1) as being

- a member who was a limited partner (within the meaning assigned by subsection 96(2.4) of the Act) of the partnership at any time in the fiscal period, or
- a member who, throughout that part of the fiscal period that a business of the partnership is ordinarily carried on and during which the member was a member of the partnership, was neither
    - actively engaged in the business of the partnership (otherwise than in the financing of the business), nor
    - carrying on, otherwise than as a member of a partnership, a similar business as that carried on by the partnership (otherwise than in the financing of the business).

The postamble of paragraph (*b*) requires that the qualifying employers must receive compensation from the affiliate or the partnership, as the case may be, for the services provided to the affiliate or the partnership, as the case may be, by those employees the value of which is not less than the cost to those qualifying employers of the compensation paid or accruing to the benefit of those employees that performed the services during the time the services were performed by those employees.

The definition "investment business" is amended in the following ways.

First, subparagraph (*a*)(i) of the definition is amended to refer to a business carried on by a foreign affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

- of each country in which the business is carried on through a permanent establishment (the definition "permanent establishment" in proposed new section 8202 of the Regulations applies for this purpose) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

- of the country in which the business is principally carried on, or
- if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Second, paragraph (*b*) of the definition "investment business" is replaced by new paragraphs (*b*) and (*c*). Thus, the business must meet the requirements of paragraphs (*a*), (*b*) and (*c*) in order not to be considered an investment business.

New paragraph (*b*) provides that the affiliate must carry on the business either

- otherwise than as a member of a partnership, or
- as a "qualifying member" of a partnership.

Note that, in new paragraph (*b*), the concept of "member of a partnership (except where the affiliate is a specified member of the partnership)" is replaced by the concept of "qualifying member of a partnership".

New paragraph (*b*) also defines the expression "operator" for the purpose of paragraph (*c*). The affiliate is defined to be the "operator" of the business in respect of those times when the affiliate carries on the business otherwise than as a member of a partnership. The partnership is defined to be the "operator" of the business in respect of those times when the affiliate carries on the business as a qualifying member of the partnership. For the definition "qualifying member", please refer to new paragraph 95(2)(*o*).

New paragraph (*c*) of the definition "investment business" requires that the operator must

- employ more than five employees full time in the active conduct of the business (subparagraph (*c*)(i)), or
- employ the equivalent of more than five employees full time in the active conduct of the business taking into consideration only
  - the services provided by employees of the operator, and
  - the services provided outside Canada to the operator by any one or more persons each of whom is, during the time at which the services were performed by the person, an employee of a qualifying employer (subparagraph (*c*)(ii)).

Under subparagraph (*c*)(ii), an employer is a qualifying employer where the employer is

- a corporation related to the affiliate (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act),
- where the operator is the affiliate,
  - a corporation (referred to as a "providing shareholder") that is a qualifying shareholder of the affiliate,
  - a designated corporation in respect of the affiliate, or
  - a designated partnership in respect of the affiliate, and
- where the operator is the partnership,
  - any person (referred to as a "providing member") who is a qualifying member of that partnership,
  - a designated corporation in respect of the affiliate, or
  - a designated partnership in respect of the affiliate.

The expressions "qualifying member", "qualifying shareholder", "designated corporation" and "designated partnership" are defined in new paragraphs 95(2)(*o*), (*p*), (*s*) and (*t*), respectively.

New paragraphs (*b*) and (*c*) of the definition "investment business", in conjunction with the new definition "qualifying member" in paragraph 95(2)(*o*), ensure that, in applying those paragraphs of the definition "investment business", limited partners who are qualifying members of a limited partnership are treated in the same manner as general partners of a general partnership. They also ensure that, even if the activities of the relevant partner do not meet the business activity requirements in new subparagraph 95(2)(*o*)(i), a partnership may qualify under paragraph (*b*) of the definition "investment business" as an operator (or a partner of the partnership may qualify under paragraph (*c*) of that definition as a qualifying employer) if the relevant partner has an equity interest in the partnership that meets the criteria set out in new subparagraph 95(2)(*o*)(ii). For more detail, please refer to the commentary to new paragraph 95(2)(*o*).

As well, new paragraphs (*b*) and (*c*) of the definition "investment business", in conjunction with the new definition "qualifying shareholder" in paragraph 95(2)(*p*), ensure that, in the case where the affiliate carries on the business (otherwise than as a member of a partnership), services that are rendered outside of Canada by employees of a corporation that was a "qualifying shareholder" of the affiliate, and that otherwise meets the conditions set out in paragraph (*c*) of the definition "investment business", may be taken into account in determining whether the "more than five employees full time" equivalency test in paragraph (*c*) is met. For more information, please refer to the commentary to the definition "qualifying shareholder" in paragraph 95(2)(*p*).

New paragraph (*c*) expands the scope of partnerships or corporations that may be taken into account as qualifying employers in determining whether the "more than five employees full time" equivalency test in paragraph (*c*) is met by introducing the concepts of "designated corporation" and "designated partnership" as newly defined in paragraphs 95(2)(*s*) and (*t*). For additional information, please refer to commentary to paragraphs 95(2)(*s*) and (*t*).

The postamble that is in current paragraph (*b*) becomes the postamble of paragraph (*c*) with necessary changes to reflect the revised set of qualifying employers.

New subparagraph (*a*)(i) of the definition "investment business" applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

New paragraphs (*b*) and (*c*) of the definition "investment business" apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. These new paragraphs (*b*) and (*c*) are included in the Global Section 95 Election package described in the beginning of the commentary to section 95.

"non-qualifying business"

The expression "non-qualifying business" is newly defined in subsection 95(1) of the Act.

"Non-qualifying business" of a foreign affiliate of a taxpayer at any time is defined to mean a business carried on by the foreign affiliate through a permanent establishment in a jurisdiction that, at the end of the foreign affiliate's taxation year that includes that time, is a "non-qualifying country", other than

- an investment business of the foreign affiliate, or
- a business that is deemed by subsection 95(2) to be a business other than an active business of the foreign affiliate.

The expression "non-qualifying country" is newly defined in subsection 95(1).

The new definition "non-qualifying business" applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

"non-qualifying country"

The expression "non-qualifying country" is newly defined in subsection 95(1) of the Act.

"Non-qualifying country" at any time is defined to mean a country or other jurisdiction with which

- Canada does not have a tax treaty at that time,
- Canada does not have a comprehensive tax information exchange agreement that is in force and has effect at that time, and
- Canada has, more than 60 months before that time, either
  - begun negotiations for a comprehensive tax information exchange agreement (unless that time is before 2014 and Canada was, on March 19, 2007, in the course of negotiating a comprehensive tax information exchange agreement with that jurisdiction), or
  - sought, by written invitation, to enter into negotiations for a comprehensive tax information exchange agreement (unless that time is before 2014 and Canada was, on March 19, 2007, in the course of negotiating a comprehensive tax information exchange agreement with that jurisdiction).

The new definition "non-qualifying country" applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

"relevant non-arm's length entity"

The new definition "relevant non-arm's length entity" in subsection 95(1) of the Act is relevant for new paragraphs 95(2)(*f*) and (*f.1*).

"Relevant non-arm's length entity", in respect of a taxpayer, at any time, is defined to mean

- the taxpayer,
- an entity with whom the taxpayer does not deal at arm's length at that time,
- where the taxpayer is a corporation that is deemed, because of section 87 or 88 of the Act, to be at that time the same person as and a continuation of another corporation that is not a "designated acquired corporation" in respect of the taxpayer, that other corporation, or
- where an entity with whom the taxpayer does not deal at arm's length at that time is deemed, because of section 87 or 88, to be at that time the same person as and a continuation of another corporation this is not a "designated acquired corporation" in respect of the taxpayer, that other corporation.

Refer also to the commentary for new subsection 95(2.6), which contains rules, for the purpose of the definition "relevant non-arm's length entity", for determining whether an entity was not, at a particular time, dealing at arm's length with another entity.

The term "designated acquired corporation", used in the definition "relevant non-arm's entity", is newly defined in subsection 95(1).

"Designated acquired corporation", in respect of a taxpayer, is defined in subsection 95(1) to mean a corporation that meets one of two descriptions.

Under the first of these two descriptions, a designated acquired corporation, in respect of a taxpayer, generally means a predecessor corporation under an amalgamation (to which section 87 applied) that formed the taxpayer if, as a result of the amalgamation or as part of the series of transactions or events that includes the amalgamation there was an arm's length acquisition of control of the predecessor corporation by the taxpayer or by a corporate group that includes the taxpayer.

More specifically, where the taxpayer was formed as a consequence of the amalgamation of two or more corporations (each such corporation being referred to as a "predecessor corporation") to which section 87 applied, a predecessor corporation is a designated acquired corporation in respect of the taxpayer if, as a result of the amalgamation or as part of the series of transactions or events that includes the amalgamation, control of the predecessor corporation was acquired by a person or a group of persons that

- immediately after the amalgamation, controlled the taxpayer, and
- immediately before the amalgamation or the commencement of that series, as the case may be,
  - did not control the predecessor corporation, and
  - dealt at arm's length with the person or the group of persons that, immediately before the amalgamation or the commencement of that series, as the case may be, controlled the predecessor corporation.

Under the second of these descriptions, a designated acquired corporation, in respect of a taxpayer, generally means a corporation (the "discontinuing corporation") that was wound-up into the taxpayer (under a winding-up to which subsection 88(1) applied) if, as a result of the winding-up or as part of the series of transactions or events that includes the winding-up there was an arm's length acquisition of control of the discontinuing corporation by the taxpayer or by a corporate group that include the taxpayer.

More specifically, a corporation (the "discontinuing corporation") that was wound-up into the taxpayer in a winding-up to which subsection 88(1) applied is a designated acquired corporation in respect of the taxpayer if, as a result of the winding-up or as part of the series of transactions or events that includes the winding-up, control of the discontinuing corporation was acquired by a person or a group of persons that

- immediately after the winding-up, controlled the taxpayer, and
- immediately before the winding-up or the commencement of that series, as the case may be,
  - did not control the discontinuing corporation, and
  - dealt at arm's length with the person or the group of persons that, immediately before the winding-up or the commencement of that series, as the case may be, controlled the discontinuing corporation.

The following example illustrates the first description of "designated acquired corporation".

Example:

Facts:

1. *Parent and Target are both corporations resident in Canada.*
2. *FA1 and FA2 are foreign affiliates of Target. Target owns all of the shares of the capital stock of FA1, a non-resident corporation. FA1 owns all of the shares of the capital stock of FA2, a non-resident corporation.*
3. *Parent forms Acquisitionco, a corporation resident in Canada. Parent owns all of the capital stock of that corporation.*
4. *Acquisitionco purchases all of the shares of the capital stock of Target from the shareholders of Target. Acquisitionco deals at arm's length with the shareholders of Target.*
5. *As part of the same series of transactions as the acquisition, Target and Acquisitionco amalgamate (under an amalgamation to which section 87 applies) to form Amalco on June 1, 2008.*
6. *At the time of the amalgamation of Target and Acquisitionco, FA1 has an accrued capital gain of $1 million on its shares of the capital stock of FA2 which are not excluded property of FA1.*
7. *On June 1, 2010, FA1 disposes of the shares of the capital stock of FA2 and has a capital gain of $2.5 million from that disposition.*

Results:

A. *Target is a predecessor corporation of Amalco. Therefore, absent the "designated acquired corporation" definition, Target would be a "relevant non-arm's length entity" in respect of Amalco. Therefore, in computing FA1's capital gain in respect of Amalco in FA1's taxation year that includes June 1, 2010, FA1 would, in accordance with paragraph 95(2)(f), be required to include the gain of $2.5 million from the disposition of the FA2 shares, even though $1 million of the $2.5 million gain that accrued before the amalgamation of Target and Acquisitionco that occurred as part of a series of transactions or events that includes the arm's length acquisition of control of Target by Acquisitionco.*

B. *The "designated acquired corporation" definition ensures that the $1 million portion of the gain accrued in Target before that amalgamation of Target and Acquisitionco is excluded in computing FA1's capital gain from the disposition of the FA2 shares determined in respect of Amalco.*

C. *Similarly, if, instead of a gain, FA1 had a loss from the disposition of the FA2 shares, any portion of that loss that accrued before that amalgamation of Target and Acquisitionco would be excluded in computing FA1's capital loss from the disposition of the FA2 shares determined in respect of Amalco.*

The new definitions "relevant non-arm's length entity" and "designated acquired corporation" in subsection 95(1) apply in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 1994.

"specified fixed interest"

The new definition "specified fixed interest" in subsection 95(1) of the Act is relevant for the new definition "exempt trust" in subsection 95(1).

"Specified fixed interest", at any time, of an entity (as newly defined in subsection 95(1)) in a trust, is defined to mean an interest of the entity as a beneficiary under the trust if

- the interest includes, at that time, rights of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income and capital of the trust,
- the interest was issued by the trust, at or before that time, to an entity, in exchange for consideration and the fair market value of that consideration was equal to the fair market value of the interest,

- the only manner in which any part of the interest may cease to be the entity's is by way of a disposition (determined without reference to paragraph (*i*) of the definition "disposition" in subsection 248(1) of the Act and paragraph 248(8)(*c*)) by the entity of that part, and
- no amount of income or capital of the trust that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power.

This new definition applies after February 27, 2004.

"specified purchaser"

The expression "specified purchaser" is newly defined in subsection 95(1) of the Act. "Specified purchaser", at any time, in respect of a particular taxpayer resident in Canada, is defined to mean an entity that is, at that time,

1. the particular taxpayer,
2. an entity resident in Canada with which the particular taxpayer does not deal at arm's length,
3. a foreign affiliate of an entity described in any of 1, 2 and 4 to 6,
4. a trust (other than an exempt trust) in which an entity described in any of 1 to 3 and 5 and 6 is beneficially interested,
5. a partnership of which an entity described in any of 1 to 4 and 6 is a member; or
6. an entity (other than an entity described in any of 1 to 5) with which an entity described in any of 1 to 5 does not deal at arm's length.

In this set of amendments, the expression "specified purchaser" is used in the new definition "exempt trust" in subsection 95(1).

Note that the terms "entity" and "exempt trust" are new terms that are defined in subsection 95(1).

This new definition applies after February 27, 2004. However, after February 27, 2004 and before Announcement Date, "specified purchaser", at any time, in respect of a particular taxpayer resident in Canada, is defined to mean an entity that is, at that time,

1. the particular taxpayer,
2. a taxpayer resident in Canada with which the particular taxpayer does not deal at arm's length,
3. a foreign affiliate of a person described in 1 or 2,
4. a non-resident person with which a person described in any of 1 to 3 does not deal at arm's length,
5. a trust (other than an exempt trust) in which a person or partnership described in any of 1 to 4 and 6 is beneficially interested, and
6. a partnership of which a person or partnership described in any of 1 to 5 is a member.

"taxable Canadian business"

The expression "taxable Canadian business" is newly defined in subsection 95(1) of the Act. In this set of amendments, this expression is used in new paragraph 95(2)(*f.1*).

A "taxable Canadian business", at any time, of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to as the "operator"), is defined to mean a business the foreign affiliate's portion of the operator's income from which would, if there were income from the business,

- be included in computing the foreign affiliate's taxable income earned in Canada for a taxation year under subparagraph 115(1)(*a*)(ii) of the Act, and
- not be exempt, because of a tax treaty with a country, from tax under Part I of the Act.

In connection with the application of the definition "taxable Canadian business", note the rules in proposed new paragraph 95(2)(*u*).

This new definition applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

"transitional exchange rate"

The expression "transitional exchange rate" is newly defined in subsection 95(1) of the Act. It is relevant for new paragraph 95(2)(*f.2*).

"Transitional exchange rate" for a particular taxation year of a foreign affiliate of a taxpayer is defined to mean the average, for the 12-month period ending on the last day of the particular taxation year, of the rate of exchange (calculated by reference to the rates of exchange quoted by the Bank of Canada at noon on each business day in the period) for the exchange of a unit of the calculating currency for the taxation year of the foreign affiliate that immediately follows the particular taxation year for a unit of the calculating currency for the particular taxation year.

This new definition applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after 1994.

Determination of certain components of foreign accrual property income

ITA
95(2)

Subsection 95(2) of the Act provides rules for determining the income, of a foreign affiliate of a taxpayer resident in Canada, from a particular source. A foreign affiliate is considered to have three sources of income — income from property, income from a business other than an active business and income from an active business. This sourcing is important since the affiliate's income from property and the affiliate's income from a business other than an active business are included in the foreign accrual property income (FAPI) of the affiliate. Where the affiliate is a controlled foreign affiliate of the taxpayer, the taxpayer's share of the affiliate's FAPI must be included, under section 91 of the Act, in the taxpayer's income for Canadian tax purposes whether or not the income is distributed. The income of a foreign affiliate of a taxpayer from an active business is included, under section 90 of the Act, in the taxpayer's income for Canadian tax purposes only when paid to the shareholder as a dividend.

ITA
95(2)(*a*)

Paragraph 95(2)(*a*) of the Act characterizes, in certain circumstances, amounts that would otherwise be income from property as income from an active business. More particularly, subparagraphs 95(2)(*a*)(i) to (iv) provide that particular income of a foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest throughout a taxation year of the affiliate, from sources in a country (other than Canada) that would otherwise be income from property of the affiliate for the year, will be included in computing the income from an active business of the affiliate for the year.

However, paragraph 95(2)(*a*) does not

- require amounts that would otherwise be "losses" from property of the affiliate to be included in computing the income from an active business of the affiliate, or
- require amounts that would otherwise be income or losses from property of the affiliate to be included in computing the "loss" from an active business of the affiliate.

Paragraph 95(2)(*a*) is amended so that throughout that paragraph, except clauses 95(2)(*a*)(ii)(D) and (E)[1], the word "income" is replaced with the words "income or loss".

In general, these amendments to paragraph 95(2)(*a*) ensure that, if the conditions specified in that paragraph are satisfied,

- amounts that would otherwise be "losses" from property of the affiliate can be included in computing the income from an active business of the affiliate, and
- amounts that would otherwise be income or losses from property of the affiliate can be included in computing the "loss" from an active business of the affiliate.

These amendments apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

The preamble of paragraph 95(2)(*a*) of the Act is amended to broaden the scope of the paragraph to include those foreign affiliates of the taxpayer in which the taxpayer does not have a qualifying interest throughout the year but which are controlled foreign affiliates of the taxpayer throughout the year.

This amendment applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

ITA
95(2)(*a*)(i)

In general terms, subparagraph 95(2)(*a*)(i) of the Act permits a particular foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, to include, in its active business income, its property income that

- is derived by it from activities that can reasonably be considered to be directly related to active business activities carried on in a country (other than Canada) by a person (referred to in this commentary for convenience as the "operator") that is
  - any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (for convenience, referred to as Case 1), or
  - the taxpayer, where the taxpayer is a life insurance corporation resident in Canada throughout the year (for convenience, referred to as Case 2), and

---

[1] For taxation years of foreign affiliates of a taxpayer that begin after 2008, clause 95(2)(*a*)(ii)(E) is renumbered as 95(2)(*a*)(ii)(A) consequential to the repeal of existing clause 95(2)(*a*)(ii)(A).

- would, if the operator were a foreign affiliate of the taxpayer and the income were earned by it, be included in computing the active business income of the operator.

Subparagraph 95(2)(*a*)(i) is amended in the following ways:

First, as noted in the opening commentary to paragraph 95(2)(*a*), the preamble of subparagraph 95(2)(*a*)(i) is amended to ensure that the word "income" is replaced with the words "income or loss".

Second, subparagraph 95(2)(*a*)(i) is amended to ensure that

- for taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009, the operator in Case 1 either must be either a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year or a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, and
- for taxation years, of a foreign affiliate of a taxpayer, that begin after 2008, the operator in Case 1 must be a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year.

Third, subparagraph 95(2)(*a*)(i) is being amended in respect of Case 2.

Case 2 deals with the situation where a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest performs the treasury activities for the foreign branch of a Canadian multinational life insurer. The income of the treasury activities could be included in the active business income of the affiliate if the income would be active business income of the foreign branch if it were a foreign affiliate of the taxpayer and it earned the income.

However, Case 2 would not apply where, for example, a particular wholly-owned Canadian subsidiary of the taxpayer is a life insurance corporation resident in Canada that has a foreign branch and a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest performs the treasury activities for the foreign branch. This is the case because the wholly-owned Canadian subsidiary of the taxpayer does not have a qualifying interest in the foreign affiliate of the taxpayer.

In order to address that concern, subclause 95(2)(*a*)(i)(A)(II) and clause 95(2)(*a*)(i)(B) are amended to extend Case 2 to situations where the foreign branch is a foreign branch of a life insurance corporation resident in Canada that is

1. the taxpayer,
2. a person who controls the taxpayer,
3. a person controlled by the taxpayer, or
4. a person controlled by a person who controls the taxpayer.

These amendments in respect of Case 2 apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. These amendments are included in the Section 95 Global Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*a*)(ii)

Subparagraph 95(2)(*a*)(ii) of the Act provides that income that would otherwise be income from property for a taxation year of a particular foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, will be included in the particular affiliate's income from an active business for the year to the extent that the income is derived from amounts paid or payable, directly or indirectly, to the particular affiliate or a partnership of which it is a member

- by a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year or by a partnership of which the non-resident corporation is a member (other than where it is a specified member, as defined in subsection 248(1) of the Act, of the partnership at any time in a fiscal period of the partnership that ends in the year) to the extent that those amounts paid or payable are for expenditures (either an expenditure of a current nature or an expenditure in respect of which an allowance is claimed) that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year by it in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada (clause 95(2)(*a*)(ii)(A)),
- by another foreign affiliate (referred to for convenience in the explanation of amendments below, as the "other foreign affiliate") of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or by a partnership of which the other foreign affiliate of the taxpayer is a member (other than where the other affiliate is a specified member of the partnership at any time in a fiscal period of the partnership that ends in the year) to the extent that those amounts paid or payable are for expenditures (either an expenditure of a current nature or an expenditure in respect of which an allowance is claimed) that are or would, if the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year by the other affiliate or the partnership in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada (clause 95(2)(*a*)(ii)(B)),
- by a partnership where the particular affiliate is a member of the partnership (other than where it is a "specified member" of the partnership at any time in a fiscal period of the partnership that ends in the year) to the extent that those amounts paid or payable are for expenditures (either an expenditure of a current nature or an expenditure in respect of which an allowance is claimed) that would, if the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year in computing the amounts prescribed to be its earnings or loss from an active business carried on by it outside Canada (clause 95(2)(*a*)(ii)(C)),
- by another foreign affiliate (the "second affiliate") of the taxpayer that is related to the particular affiliate and the taxpayer throughout the year pursuant to a legal obligation to pay interest on borrowed money used to acquire, or on an amount payable for the acquisition of, property where
  - the property is excluded property of the second affiliate that is shares of another foreign affiliate (the "third affiliate") of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year,
  - the second affiliate and the third affiliate are resident in, and subject to income taxation in, the same country, and
  - the amounts paid or payable are relevant in computing the liability for taxes of the members of a corporate group composed of the second affiliate and one or more other foreign affiliates of the taxpayer which are resident in, and not exempt from income taxation in, the same country as the second affiliate and in respect of which the taxpayer has a qualifying interest throughout the year (clause 95(2)(*a*)(ii)(D)), or

- by the taxpayer, where the taxpayer is a life insurance corporation resident in Canada, to the extent that those amounts paid or payable are for expenditures that are deductible in the year or a subsequent taxation year by the life insurance corporation resident in Canada in computing its income or loss from carrying on its insurance business outside Canada and not in Canada (clause 95(2)(*a*)(ii)(E)).

A foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, will be precluded from using clauses 95(2)(*a*)(ii)(A), (B) and (C) if the relevant member of the partnership referred to in those clauses is a specified member of the partnership.

Generally, a "specified member" of a partnership in a fiscal period of the partnership is defined in subsection 248(1) of the Act as being

- a member who was a limited partner (within the meaning assigned by subsection 96(2.4) of the Act) of the partnership at any time in the fiscal period, or
- a member who, throughout that part of the fiscal period that a business of the partnership is ordinarily carried on and during which the member was a member of the partnership, was neither
  - actively engaged in the business of the partnership (otherwise than in the financing of the business), nor
  - carrying on, otherwise than as a member of a partnership, a similar business as that carried on by the partnership (otherwise than in the financing of the business).

Subparagraph 95(2)(*a*)(ii) is amended in the following ways.

First, applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2008, paragraph 95(2)(*a*)(ii) is amended

- by repealing clause 95(2)(*a*)(ii)(A) and by renumbering clause 95(2)(*a*)(ii)(E) as new clause 95(2)(*a*)(ii)(A),
- by amending clause 95(2)(*a*)(ii)(B) to read as follows:

  "(B) by

  > (I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, to the extent that those amounts that were paid or payable are for expenditures that were deductible by that other foreign affiliate in computing the amounts prescribed to be its earnings or loss for a taxation year from an active business (other than an active business carried on in Canada), or
  >
  > (II) a partnership of which another foreign affiliate of the taxpayer (in respect of which other foreign affiliate of the taxpayer has a qualifying interest throughout the year) is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that other foreign affiliate was a member of the partnership, to the extent that those amounts that were paid or payable are for expenditures that are deductible by the partnership in computing that other foreign affiliate's share of any income or loss of the partnership, for a fiscal period, that is included in computing the amounts prescribed to be that other foreign affiliate's earnings or loss for a taxation year from an active business (other than an active business carried on in Canada),"

- by replacing the reference in clause 95(2)(*a*)(ii)(C) to "by a partnership of which the particular affiliate is a member and of which the particular affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year" with a reference to "by a partnership of which the particular foreign affiliate is a qualifying member throughout each period, in a fiscal period of the partnership that ends in the year, in which the particular foreign affiliate was a member of the partnership,", and
- by replacing the reference in clause 95(2)(*a*)(ii)(D) to "to which the particular affiliate and the taxpayer are related" with a reference to "in respect of which the taxpayer has a qualifying interest".

Second, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009, paragraph 95(2)(*a*)(ii) is amended

- by replacing the reference in clause 95(2)(*a*)(ii)(C) to "by a partnership of which the particular affiliate is a member and of which the particular affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year" with a reference to "by a partnership of which the particular foreign affiliate is a qualifying member throughout each period, in a fiscal period of the partnership that ends in the year, in which the particular foreign affiliate was a member of the partnership,", and
- by replacing the reference in clause 95(2)(*a*)(ii)(D) to "to which the particular affiliate and the taxpayer are related" with a reference to "in respect of which the taxpayer has a qualifying interest".

Note, among other things, that clause 95(2)(*a*)(ii)(B), applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, is amended to replace the requirement in current clause 95(2)(*a*)(ii)(B) that the amounts paid or payable were or would be deductible by the "other foreign affiliate" or the partnership in "the year or a subsequent taxation year" by the requirement that those amounts were or would be deductible by it in any of its taxation years or fiscal periods.

Third, clause 95(2)(*a*)(ii)(A) (as it reads in its application to taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begins before 2009) and clauses 95(2)(*a*)(ii)(B) and (C) are amended (referred to in this commentary as the "Qualifying Member Amendments" to those clauses) so that the condition requiring the relevant member of the partnership to be a member of the partnership (otherwise than as a specified member of the partnership) is replaced by the condition requiring the relevant member to be a "qualifying member" of the partnership throughout each period, in the fiscal period of the partnership that ends in the year, in which the relevant member was a member of the partnership. The expression "qualifying member" is a new term, which is defined in new paragraph 95(2)(*o*).

The Qualifying Member amendments to those clauses 95(2)(*a*)(ii)(A) to (C) apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

The Qualifying Member amendments to those clauses 95(2)(*a*)(ii)(A) to (C), in conjunction with the new definition "qualifying member", ensure that, in applying those clauses, limited partners of limited partnerships that are qualifying members are treated in the same manner as general partners of general partnerships. Those provisions also ensure that, even if the activities of the relevant person do not meet the business activity requirements in new subparagraph 95(2)(*o*)(i), a partnership may still qualify under that clause 95(2)(*a*)(ii)(A), (B) or (C) if the relevant person has an equity interest in the partnership that meets the criteria set out in new subparagraph 95(2)(*o*)(ii). For more detail, please refer to the commentary to new paragraph 95(2)(*o*).

Fourth, clause 95(2)(*a*)(ii)(A) (as it reads in its application to taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009) is amended so that the requirement in that clause that the amounts paid or payable would be deductible by the non-resident corporation or the partnership in "the year or a subsequent taxation year" is replaced by the requirement that those amounts would be deductible by it in any of its taxation years or fiscal periods.

Fifth, the requirement in clause 95(2)(*a*)(ii)(C) that the amounts paid or payable would be deductible by the partnership in "the year or a subsequent taxation year" is replaced by the requirement that those amounts would be deductible by it in any of its fiscal periods. This amendment applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

Sixth, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, clause 95(2)(*a*)(ii)(D) is amended to

- introduce the concept of a particular period in the preamble to clause 95(2)(*a*)(ii)(D) and in subclause 95(2)(*a*)(ii)(D)(III),
- repeal current subclause 95(2)(*a*)(ii)(D)(V) so as to remove the requirement that existed in that subclause, and
- replace current subclause 95(2)(*a*)(ii)(D)(IV) with new subclauses 95(2)(*a*)(ii)(D)(IV) and (V).

Seventh, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, the preamble to clause 95(2)(*a*)(ii)(D) is amended (referred to in this commentary as the "Second Affiliate Testing Amendment" to that clause) to ensure that a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest is also considered to be a "second affiliate" defined in that subclause. Under the current preamble to clause 95(2)(*a*)(ii)(D), a foreign affiliate of a taxpayer cannot be a "second affiliate" defined in that subclause unless the "particular foreign affiliate" and the taxpayer are related to that foreign affiliate.

Eighth, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, subclause 95(2)(*a*)(ii)(D)(III) and the preamble to clause 95(2)(*a*)(ii)(D) are amended so that

- the preamble to clause 95(2)(*a*)(ii)(D) is revised to describe amounts paid or payable by the "second affiliate" as being in respect of a particular period in the year (rather than in respect of the year), and
- subclause 95(2)(*a*)(ii)(D)(III) requires certain requirements to be met throughout the particular period in the year (rather than throughout the year). (For more details, please refer to below for a summary of that new subclause.)

Ninth, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, subclause 95(2)(*a*)(ii)(D)(III) is amended to ensure that a foreign affiliate of the taxpayer to which the "particular foreign affiliate" and the taxpayer are related is also considered to be a "third affiliate" defined in that subclause. (Related foreign affiliates would be controlled foreign affiliates of the taxpayer.) Under existing subclause 95(2)(*a*)(ii)(D)(III), a foreign affiliate of a taxpayer cannot be a "third affiliate" defined in that subclause unless the foreign affiliate is a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest.

In summary, subclause 95(2)(*a*)(ii)(D)(III), as amended, provides that the property must, throughout the particular period in the year, be excluded property of the second affiliate that is shares of a corporation (the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest or to which the particular foreign affiliate and the taxpayer are related.

Tenth, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, current subclause 95(2)(*a*)(ii)(D)(V) is repealed, so that that subclause no longer forms part of the requirements under clause 95(2)(*a*)(ii)(D). That current subclause requires that the amounts paid or payable by the second affiliate to the particular affiliate had to be relevant in computing the liability for income taxes in that country of a corporate group composed of the second affiliate and one or more other foreign affiliates of the taxpayer (the shares of which are excluded property) that are resident in, and subject to income taxation in, that country and in respect of which the taxpayer has a qualifying interest throughout the year.

Eleventh, applicable to taxation years, of a foreign affiliate of a taxpayer, that end after 1999, current subclause 95(2)(*a*)(ii)(D)(IV) is replaced by new subclauses 95(2)(*a*)(ii)(D)(IV) and (V).

Under current subclause 95(2)(*a*)(ii)(D)(IV), the "second affiliate" and the "third affiliate" must be resident in and subject to income taxation in the same country. Thus, each of those affiliates must itself be subject to income taxation in that country and cannot be a flow-through entity under the income tax laws of that country. New subclauses 95(2)(*a*)(ii)(D)(IV) and (V) are intended to accommodate the case where the second affiliate, the third affiliate, or both, are such a flow-through entity.

New subclause 95(2)(*a*)(ii)(D)(IV) requires that the second affiliate and the third affiliate be resident in the same country for each of their taxation years (each of which taxation years is referred to as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year.

New subclause 95(2)(*a*)(ii)(D)(V) requires that, in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

- that affiliate be subject to income taxation in that country in that relevant taxation year (sub-subclause 95(2)(*a*)(ii)(D)(V)1), or
- the members or shareholders of that affiliate (which, for the purpose of sub-subclause 95(2)(*a*)(ii)(D)(V)2, includes a person that has, directly or indirectly, an interest, or for civil law a right, in a share of, or in an equity interest in, the affiliate) at the end of that relevant taxation year be subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends (sub-subclause 95(2)(*a*)(ii)(D)(V)2).

Twelfth, clause 95(2)(*a*)(ii)(E) is amended both as it reads in its application to taxation years of a foreign affiliate of a taxpayer that end after 1999 and begin before 2009 and as it applies as new renumbered clause 95(2)(*a*)(ii)(A) to taxation years of a foreign affiliate of a taxpayer that begin after 2008. As noted above, current clause 95(2)(*a*)(ii)(E) provides for the recharacterization of certain amounts paid or payable to the particular affiliate, where the payer is the taxpayer and the taxpayer is a life insurance corporation resident in Canada, to the extent that those amounts are for expenditures that are deductible in the year or a subsequent taxation year by the taxpayer in computing its income or loss from carrying on its insurance business outside Canada and not in Canada. In that clause 95(2)(*a*)(ii)(E) or (A), the description of the payer is broadened and reference is made to expenditures that are deductible in any taxation year. That amendment would provide for the recharacterization of certain amounts paid or payable to the particular affiliate, where the payer is a life insurance corporation that is resident in Canada and is the taxpayer, a person who controls the taxpayer, a person controlled by the taxpayer or a person controlled by a person who controls the taxpayer, to the extent that those amounts were for expenditures that are deductible in the year or in a subsequent taxation year by the life insurance corporation in computing its income or loss from carrying on its life insurance business outside Canada and are not deductible in a taxation year of the life insurance corporation in computing its income or loss from carrying on its life insurance business in Canada. That amendment to clause 95(2)(*a*)(ii)(E) is applicable to the taxation years, of a foreign affiliate of a taxpayer, that end after 1999 and begin before 2009 and that amendment to clause 95(2)(*a*)(ii)(A) is applicable to taxation years, of a foreign affiliate of a taxpayer, that begin before 2008.

Finally, as noted in the opening commentary to paragraph 95(2)(*a*), the amendments to that paragraph ensure that, throughout subparagraph 95(2)(*a*)(ii), except clause (D), the word "income" is replaced with the words "income or loss".

Elections:

Note that the following elections are applicable with respect to subparagraph 95(2)(*a*)(ii):

- If a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, clauses 95(2)(*a*)(ii)(A) to (C) and (E) of the Act, as they read in their application to taxation years of foreign affiliates of a taxpayer that end after 1999 and begin before 2009, also apply to taxation years of all foreign affiliates of the taxpayer that begin after 1994 and end before 2000, except that

    - subclause (II) of that clause 95(2)(*a*)(ii)(A) is to be read as follows:

      "(II) a partnership of which a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year is a member and of which that non-resident corporation is not a specified member at any time in a fiscal period of the partnership that ends in the year,"

    - subclause (II) of that clause 95(2)(*a*)(ii)(B) is to be read as follows:

      "(II) a partnership of which another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year is a member and of which that other foreign affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year"

    - that clause 95(2)(*a*)(ii)(C) is to be read as follows:

    "(C) by a partnership of which the particular affiliate is a member and of which the particular affiliate is not a specified member at any time in a fiscal period of the partnership that ends in the year, to the extent that those amounts that were paid or payable were for expenditures that would be, if the partnership were a foreign affiliate of the taxpayer, deductible in a taxation year in computing the amounts prescribed to its earnings or loss from an active business carried on by it outside Canada,"

  This set of proposals provides that, where such an election is made, the Minister of National Revenue can, notwithstanding subsections 152(4) to (5) of the Act, make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take such an election into account.

- As well, the amendments to some of the provisions of subparagraph 95(2)(*a*)(ii) are included in the Section 95 Global Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*a*)(iii) and (iv)

New subparagraph 95(2)(*a*)(iii) of the Act includes in the income from an active business for a taxation year of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year its income for the year derived from the factoring of accounts receivable acquired by it or by a partnership of which it was a member from a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year. The accounts receivable must have arisen in the course of an active business carried on outside Canada by the non-resident corporation.

New subparagraph 95(2)(*a*)(iv) includes in the income from an active business for a taxation year of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year its income for the year derived from loans or lending assets acquired by the particular affiliate or a partnership of which it was a member from a non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year. The loans and lending assets must have arisen in the course of an active business carried on outside Canada by the non-resident corporation.

Subparagraphs 95(2)(*a*)(iii) and (iv) are amended by replacing the references in those subparagraphs to a "non-resident corporation to which the particular affiliate and the taxpayer are related" with a reference to a "foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest".

These amendments are applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

ITA
95(2)(*a*)(v) and (vi)

New subparagraph 95(2)(*a*)(v) of the Act ensures that, in computing the active business income or loss of a particular foreign affiliate, there is to be included the income or loss from property derived by the particular foreign affiliate from the disposition of excluded property that is not capital property of the particular foreign affiliate. The amendment is consequential to the amendments made to the definition "excluded property" in subsection 95(1). New subparagraph 95(2)(*a*)(vi) ensures that the income or loss of the particular foreign affiliate is included in the computation of active business income or loss of the particular foreign affiliate where it is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce

- its risk — with respect to an amount that increases the amount required by that paragraph to be included in computing the particular foreign affiliate's income from an active business or that decreases the amount required by that paragraph to be included in computing the particular foreign affiliate's loss from an active business — of fluctuations in the value of the currency in which the amount was denominated, or
- its risk — with respect to an amount that decreases the amount required by that paragraph to be included in computing the particular foreign affiliate's income from an active business or that increases the amount required by that paragraph to be included in computing the particular foreign affiliate's loss from an active business — of fluctuations in the value of the currency in which the amount was denominated.

These amendments apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. These amendments are included in the Section 95 Global Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*a.1*)

Paragraph 95(2)(*a.1*) of the Act includes in the income from a business other than an active business (and thus the foreign accrual property income (FAPI) of a foreign affiliate) of a taxpayer resident in Canada, the affiliate's income from the sale of property (including the income derived from services as agent provided in relation to a purchase or sale of property) if both of the following conditions are satisfied:

- it is reasonable to conclude that the cost to any person of the property (other than property that was manufactured, produced, grown, extracted or processed in Canada by the taxpayer or a person with which the taxpayer does not deal at arm's length in the course of carrying on a business in Canada and that was subsequently sold to non-resident persons other than the affiliate or to the affiliate for sale to non-resident persons) is relevant in computing the income from a business carried on by the taxpayer or a person resident in Canada that does not deal at arm's length with the taxpayer or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length (subparagraph 95(2)(*a.1*)(i)), and
- the property was not manufactured, produced, grown, extracted or processed in the country under whose laws the affiliate was formed (or continued) and exists and is governed, and the affiliate's business was principally carried on in that country (subparagraph 95(2)(*a.1*)(ii)).

The rule does not apply where more than 90 per cent of the affiliate's gross income from the sale of property is derived from sales of property (other than property that falls within the exclusions described above) to persons that deal at arm's length with the affiliate, which, for this purpose, includes a sale of property to a related non-resident corporation for sale by it to arm's length persons. Where the rule applies to the foreign affiliate of the taxpayer, the selling of the property is deemed to be a separate business other than an active business of the affiliate. Any income that pertains to or is incident to that business is also deemed to be income of the affiliate from a business other than an active business of the affiliate.

Paragraph 95(2)(*a.1*) is amended in the following ways:

First, subparagraph 95(2)(*a.1*)(i) is amended to replace the description of the property that is excluded from the application of that subparagraph with "designated property" within the meaning assigned by new subsection 95(3.1).

Second, subparagraph 95(2)(*a.1*)(ii) is amended to replace the conditions set out in that subparagraph. Those new conditions requires that

- the property was neither
    - manufactured, produced, grown, extracted or processed in the country
        - under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and
        - in which the affiliate's business is principally carried on, nor
    - an interest in real property located in, or a foreign resource property in respect of, the country
        - under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and
        - in which the affiliate's business is principally carried on.

The definition "designated property" is provided in new subsection 95(3.1). Property is designated property if it is either

- property that
    - is sold to non-resident persons (other than the affiliate) or sold to the affiliate for sale to non-resident persons, and
    - meets one of the three tests set out in subparagraphs (*a*)(i), (ii) and (iii), respectively, of that definition (discussed below), or
- property that is an interest in real property, or a real right in an immoveable, located in, or a foreign resource property in respect of, the country
    - under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and
    - in which the affiliate's business is principally carried on.

The first test (as set out in subparagraph (*a*)(i) of the definition) requires that the property

- was – in the course of carrying on a business in Canada – manufactured, produced, grown, extracted or processed in Canada by the taxpayer, or by a person with whom the taxpayer does not deal at arm's length, or

- was – in the course of a business carried on by a foreign affiliate of the taxpayer outside Canada – manufactured or processed from tangible property, or for civil law corporeal property, that, at the time of the manufacturing or processing, was owned by the taxpayer or by a person related to the taxpayer and used or held by the owner in the course of carrying on a business in Canada, if the manufacturing or processing was in accordance with the specifications of the owner of that tangible or corporeal property and under a contract between that owner and that foreign affiliate.

The second test (as set out in subparagraph (*a*)(ii) of the definition) requires that

- the property was acquired, in the course of carrying on a business in Canada, by a purchaser from a vendor,
- the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length, and
- the vendor is a person
    - with whom the taxpayer deals at arm's length,
    - who is not a foreign affiliate of the taxpayer, and
    - who is not a foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length.

The third test (as set out in paragraph (*a*)(iii) of the definition) requires that

- the property was acquired by a purchaser from a vendor,
- the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length,
- the vendor is a foreign affiliate of
    - the taxpayer, or
    - a person resident in Canada with whom the taxpayer does not deal at arm's length, and
- the property was manufactured, produced, grown, extracted or processed in the country
    - under whose laws the vendor is governed and any of exists, was (unless the vendor was continued in any jurisdiction) formed or organized, or was last continued, and
    - in which the vendor's business is principally carried on.

Amended subparagraphs 95(2)(*a.1*)(i) and (ii) and new subsection 95(3.1) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Where the taxpayer elects in writing and files that election with the Minister of National Revenue on or before the filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, new subparagraphs 95(2)(*a.1*)(i) and (ii) and the new definition "designated property" in new subsection 95(3.1) would apply in respect of all foreign affiliates of the taxpayer for foreign affiliate taxation years that begin after 1994. This set of proposals provides that, where such an election is made, the Minister of National Revenue can, notwithstanding subsections 152(4) to (5) of the Act, make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take such an election into account.

Example 1

Facts:

1. *Canco is a corporation resident in Canada.*
2. *Forco is a controlled foreign affiliate of Canco.*
3. *XYZ is a corporation resident in Canada with whom Canco deals at arm's length.*
4. *Forco sells property to arm's length purchasers situated outside Canada. All the gross revenue and income of Forco is derived from the sale of property acquired from Canco. That property was acquired by Canco from XYZ and was manufactured in Canada by XYZ.*

Application of paragraph 95(2)(*a.1*):

Forco's income from the sale of the property that Forco had acquired from Canco would, because of existing paragraph 95(2)(a.1), be included in Forco's income from a business other than an active business and thus the FAPI of Forco. This is because existing subparagraph 95(2)(a.1)(i) exempts property manufactured in Canada only if it was manufactured by Canco or by a person with whom the Canco does not deal at arm's length. In this case, the manufacturer is XYZ, an arm's length corporation.

However, because of amended subparagraph 95(2)(a.1)(i) and paragraph (b) of the definition "designated property" in new subsection 95(3.1), Forco's income from the sale of the property acquired by Forco from Canco will not be recharacterized by paragraph 95(2)(a.1) as income from a business other than an active business.

Example 2

Facts:

1. *Canco is a corporation resident in Canada.*
2. *FA1 is a controlled foreign affiliate of Canco that was formed, exists and is governed under the laws of foreign Country A. FA1's manufacturing business is principally carried on in that country. The gross revenue and income of FA1 is derived from the sale, to Canco, of the property that FA1 manufactures.*
3. *FA2 is a controlled foreign affiliate of Canco. FA2 was formed, exists and is governed under the laws of foreign Country B. FA2's business is principally carried on in that country. FA2 purchases, from Canco, property that was manufactured in Country A by FA1. FA2 sells the property to purchasers outside of Canada.*

Application of paragraph 95(2)(*a.1*):

The income from the sale of the property acquired by FA2 from Canco would, because of existing paragraph 95(2)(a.1), be included in FA2's income from a business other than an active business and thus the FAPI of FA2. This is because existing subparagraph 95(2)(a.1)(i) exempts property manufactured, produced, grown, extracted or processed in Canada only where the property was manufactured, produced, grown, extracted or processed in Canada by Canco, or by a person with whom Canco does not deal at arm's length. In this case, the property was manufactured outside of Canada by FA1.

However, because of amended subparagraph 95(2)(a.1)(i) and paragraph (c) of the definition of "designated property" in new subsection 95(3.1), FA2's income from the sale of the property acquired by FA2 from Canco will not be recharacterized by paragraph 95(2)(a.1) as income from a business other than an active business.

ITA
95(2)(*b*)

Paragraph 95(2)(*b*) of the Act provides that if, in any of the specified circumstances referred to in subparagraph 95(2)(*b*)(i) or (ii), a particular controlled foreign affiliate of a taxpayer provides services (or an undertaking to provide services), the provision of those services (or the undertaking) is deemed to be a separate business, other than an active business, carried on by the particular affiliate and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business. Such income is therefore included in computing the particular affiliate's foreign accrual property income (FAPI).

Paragraph 95(2)(*b*) is amended in a number of ways.

First, paragraph 95(2)(*b*) is amended to provide that the rule in that paragraph will apply to a foreign affiliate of the taxpayer regardless of whether that affiliate is or is not a controlled foreign affiliate of the taxpayer. That paragraph currently only applies to controlled foreign affiliates of the taxpayer.

Second, paragraph 95(2)(*b*) is amended so that, to the extent provided by subparagraph 95(2)(*b*)(i) or (ii), where a particular foreign affiliate of a taxpayer provides services (or an undertaking to provide services), the provision of those services (or the undertaking) is deemed to be a separate business, other than an active business, carried on by the particular affiliate and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business.

Third, the conditions set out in subparagraphs 95(2)(*b*)(i) and (ii) are revised from those set out in the current subparagraphs. Amended clause 95(2)(*b*)(i)(A) replaces current clauses 95(2)(*b*)(i)(A) and (B). Amended clause 95(2)(*b*)(i)(B) is new.

As amended, subparagraph 95(2)(*b*)(i) would ensure that the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, to the extent that the amounts paid or payable in consideration for those services or for the undertaking to provide services

- are deductible, or can reasonably be considered to relate to amounts that are deductible, in computing the income from business carried on in Canada, by
  - any taxpayer of whom the affiliate is a foreign affiliate, or
  - another taxpayer who does not deal at arm's length with
    - the affiliate, or
    - any taxpayer of whom the affiliate is a foreign affiliate (clause 95(2)(*b*)(i)(A)), or
- are deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a foreign affiliate of
  - any taxpayer of whom the affiliate is a foreign affiliate, or
  - another taxpayer who does not deal at arm's length with
    - the affiliate, or
    - any taxpayer of whom the affiliate is a foreign affiliate (clause 95(2)(*b*)(i)(B)).

For example, new clause 95(2)(*b*)(i)(B) ensures that, within a corporate group, income that would otherwise be income from an investment business (and therefore included in computing FAPI) of one foreign corporation in the group cannot be converted to active business income by the payment of fees to another foreign corporation in the group for services rendered to that investment business.

As amended, subparagraph 95(2)(*b*)(ii) ensures that the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, to the extent the services are, or are to be, performed by a described entity. For this purpose, a described entity is

1. any taxpayer of whom the affiliate is a foreign affiliate,
2. another taxpayer who does not deal at arm's length with
    - the affiliate, or
    - any taxpayer of whom the affiliate is a foreign affiliate,
3. a partnership any member of which is a person described in 1 or 2, or
4. a partnership in which any person or partnership described in any of 1 to 3 has, directly or indirectly, a partnership interest.

This scope of described entities is broader than in existing subparagraph 95(2)(*b*)(ii) which addresses only services to be performed by individuals.

These amendments to paragraph 95(2)(*b*) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, in applying paragraph 95(2)(*b*) to a foreign affiliate of the taxpayer for foreign affiliate taxation years that begin after December 20, 2002 and before February 28, 2004, that paragraph is to be read as follows:

> "(b) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if
>
> (i) the amount paid or payable in consideration for those services or for the undertaking to provide those services
>
> (A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by
>
> (I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or
>
> (II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or
>
> (B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a controlled foreign affiliate of
>
> (I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or
>
> (II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or
>
> (ii) the services are, or are to be, performed by
>
> (A) any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada, or
>
> (B) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada;"

ITA
95(2)(*f*)

Paragraph 95(2)(*f*) of the Act sets out rules for computing a taxable capital gain and an allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from a disposition of a property. The rules in paragraph 95(2)(*f*) address the computation of a gain or loss from a disposition of property whether the disposition is made by the foreign affiliate itself or by a partnership of which the foreign affiliate is a member. Those rules consist of a general rule and a "carve-out" rule. The general rule provides that the gain or loss is to be computed in respect of the taxpayer in accordance with Part I of the Act (read without reference to section 26 of the *Income Tax Application Rules*) as though the foreign affiliate were resident in Canada and in accordance with the provisions of subparagraphs 95(2)(*f*)(i) and (ii) that determine the currency in which the computation is to be made.

The "carve-out" rule provides that, in computing any such gain or loss from the disposition of property that was owned by the foreign affiliate at the last time that the foreign affiliate became a foreign affiliate of the taxpayer resident in Canada, there is not to be included such portion of the gain or loss, as the case may be, as can reasonably be considered to have accrued during the carve-out period, i.e., the period that the foreign affiliate was not a foreign affiliate of the taxpayer resident in Canada or of a person specified in any of current subparagraphs 95(2)(*f*)(iv) to (vii).

Paragraph 95(2)(*f*) is amended in the following ways:

- Paragraph 95(2)(*f*) is amended to clarify that the rules in that paragraph apply in respect of the taxpayer in computing the foreign affiliate's capital gains and capital losses from a disposition of property by any person or partnership. This amendment to paragraph 95(2)(*f*) will, for example, preclude the recognition of capital gains or capital losses from the disposition of property by a foreign affiliate or a partnership to the extent that the gain or loss can reasonably be considered to have accrued during the carve-out period. This is relevant for the purpose of computing the foreign affiliate's tax surpluses and deficits in respect of the taxpayer and computing the foreign affiliate's foreign accrual property income or loss in respect of the taxpayer.
- The general rule in paragraph 95(2)(*f*) is amended to provide that each capital gain, capital loss, taxable capital gain and allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from the disposition of property by any person or partnership is to be computed in respect of the taxpayer in accordance with Part I of the Act, read without reference to section 26 of the *Income Tax Application Rules* and (except to the extent that the context otherwise requires) as if the rules that apply to taxpayers resident in Canada apply to the foreign affiliate. In this regard, for example, reference should be made to new paragraph 95(2)(*f.2*), which details which country's currency is to be used in determinations of various amounts by a foreign affiliate. This amendment to paragraph 95(2)(*f*) results in the deletion of current subparagraphs 95(2)(*f*)(i) and (ii).
- The carve-out rule in paragraph 95(2)(*f*) is amended to replace the reference to "the disposition of property owned by the affiliate" with a reference to "the disposition of property (other than a designated taxable Canadian property) by the person or partnership". This amendment addresses situations where the property disposed of was owned by a partnership of which the foreign affiliate of the taxpayer is a member. This amendment also ensures that, in computing a gain or loss from the disposition of property, no portion of the gain or loss, as the case may be, that can reasonably be considered to have accrued during the carve-out period is included. As well, this amendment ensures that there is no carve-out for a gain or loss accrued during the carve-out period on a property if it is a "designated taxable Canadian property" as newly defined in subsection 95(1). For more detail, please refer to the commentary for that definition.
- The carve-out rule in paragraph 95(2)(*f*) is also amended to delete the reference to "at the time it last became a foreign affiliate of the taxpayer". This requirement was unnecessary for the operation of paragraph 95(2)(*f*).

- The description of the carve-out period in paragraph 95(2)(*f*) is revised so that the carve-out period consists of the period throughout which the property was held by any person or partnership that, throughout the period, was not
    1. a "relevant non-arm's length entity" in respect of the taxpayer,
    2. a foreign affiliate of a "relevant non-arm's length entity" in respect of the taxpayer, or
    3. a partnership a member of which is described by 1 or 2.

The term "relevant non-arm's length entity" is newly defined in subsection 95(1). For detail, please refer to the commentary for that definition.

As amended, paragraph 95(2)(*f*) would provide that each capital gain, capital loss, taxable capital gain and allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from the disposition of property by any person or partnership is to be computed in respect of the taxpayer in accordance with Part I of the Act, read without reference to section 26 of the *Income Tax Application Rules* and (except to the extent that the context otherwise requires) as if the rules that apply to taxpayers resident in Canada apply to the foreign affiliate, except that, in computing any such capital gain, capital loss, taxable capital gain or allowable capital loss of the foreign affiliate from the disposition of property (other than a designated taxable Canadian property) by the person or partnership, there is not to be included the foreign affiliate's share of the portion of that gain or loss of the person or partnership that can reasonably be considered to have accrued during a period of time throughout which the property was held by any person or partnership that, throughout the period, was not

1. a relevant non-arm's length entity in respect of the taxpayer,
2. a foreign affiliate of a relevant non-arm's length entity in respect of the taxpayer, or
3. a partnership a member of which is described by 1 or 2.

These amendments to paragraph 95(2)(*f*) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if the taxpayer validly makes the election referred to in the commentary to new paragraph 95(2)(*f.2*) in respect of all of the taxpayer's foreign affiliates, these amendments to paragraph 95(2)(*f*) also apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1994 and before December 21, 2002. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

ITA
95(2)(*f.1*)

New paragraph 95(2)(*f.1*) of the Act provides rules that apply in computing the income or loss of a foreign affiliate of a taxpayer from property, or the income or loss from a business other than an active business of a foreign affiliate of a taxpayer resident in Canada, in respect of the taxpayer.

This new paragraph provides that the income or loss of a foreign affiliate of a taxpayer from property or the income or loss of a foreign affiliate of a taxpayer from a business other than an active business or from a non-qualifying business (as newly defined in subsection 95(1)), for a taxation year is to be computed in respect of the taxpayer in accordance with the Act and based on the assumptions listed in subparagraphs (i) to (v) of the new paragraph.

The assumption listed in subparagraph 95(2)(*f.1*)(i) is that the provisions of the Act apply to the foreign affiliate (except to the extent that the context otherwise requires) in the manner that the provisions apply to taxpayers resident in Canada. In this regard, for example, reference should be made to new paragraph 95(2)(*f.2*), which details which country's currency is to be used by a foreign affiliate in determining various amounts.

The assumption listed in subparagraph 95(2)(*f.1*)(ii) is that, in determining "resident time" in the definition "cumulative foreign resource expense" in subsection 66.21(1), the foreign affiliate were at all times resident in Canada.

The assumption listed in subparagraph 95(2)(*f.1*)(iii) is that the Act be read without reference to

- subsections 14(1.01) to (1.03), 17(1) and 18(4) of the Act, and
- section 91 of the Act, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and subsection 96(1) of the Act is to be applied to determine the foreign affiliate's share of that income or loss of the partnership.

The assumption listed in subparagraph 95(2)(*f.1*)(iv) is that there not be included — in computing the foreign affiliate's income or loss from property (other than a designated taxable Canadian property) or a business (other than an active business or a taxable Canadian business) — the foreign affiliate's share of any portion of the income or loss (that would be determined if the Act were read without reference to that subparagraph) of any person or partnership from such property or such a business that can reasonably be considered to have accrued during a period of time throughout which that property or that business was property or a business of any person or partnership that, throughout that period, was not

1. a relevant non-arm's length entity in respect of the taxpayer,
2. a foreign affiliate of a relevant non-arm's length entity in respect of the taxpayer, or
3. a partnership a member of which is described by 1 or 2.

In this regard, note that the terms "designated taxable Canadian property" and "relevant non-arm's length entity" are newly defined in subsection 95(1).

The assumption listed in subparagraph 95(2)(*f.1*)(v) is that, where the foreign affiliate has disposed of foreign resource property in respect of a country in the year and the foreign affiliate has not made a designation in respect of the disposition, the foreign affiliate had designated in respect of the disposition and in accordance with subparagraph 59(1)(*b*)(ii) of the Act for the year, an amount equal to the amount, if any, by which

- the amount computed under paragraph 59(1)(*a*) in respect of the disposition

exceeds

- the amount computed under subparagraph 59(1)(*b*)(i) in respect of the disposition.

New paragraph 95(2)(*f.1*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, there is a transitional rule for taxation years, of foreign affiliates of a taxpayer that begin after December 20, 2002 and before 2009. For those taxation years, the preamble of new paragraph 95(2)(*f.1*) is to be read without reference to the words "or from a non-qualifying business" and, thus, is to be read as follows:

> "the income or loss of a foreign affiliate of a taxpayer from property or the income or loss of a foreign affiliate of a taxpayer from a business other than an active business, for a taxation year is to be computed in respect of the taxpayer in accordance with the Act as if"

Note that, if the taxpayer validly makes the election referred to in the commentary to new paragraph 95(2)(*f.2*) in respect of all of the taxpayer's foreign affiliates, new paragraph 95(2)(*f.1*), being read in the manner described in the aforementioned transitional rule, also applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1994 and before December 21, 2002. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

ITA
95(2)(*f.2*)

New paragraph 95(2)(*f.2*) of the Act provides for various rules with respect to the currency to be used in determining various amounts in respect of a foreign affiliate of a taxpayer resident in Canada. Those rules are set out in subparagraphs 95(2)(*f.2*)(i) to (x).

New subparagraph 95(2)(*f.2*)(i) provides that a foreign affiliate of a taxpayer resident in Canada shall determine each capital gain or capital loss or taxable capital gain or allowable capital loss of the foreign affiliate for a taxation year from the disposition, at any time, of a capital property that, at that time, was an excluded property of the foreign affiliate, in its calculating currency for the taxation year, and, where subsection 39(2) of the Act applies, as if the reference to "the currency or currencies of one or more countries other than Canada relative to Canadian currency" were read as a reference to "one or more currencies other than the calculating currency relative to the calculating currency" and the references in that subsection to "of a country other than Canada" were read as references to "of a country other than the country of the calculating currency".

New subparagraph 95(2)(*f.2*)(ii) provides that a foreign affiliate of a taxpayer resident in Canada shall determine its income or loss for a taxation year from an active business carried on by it in the taxation year in a country (other than Canada), in its calculating currency for the taxation year.

New subparagraph 95(2)(*f.2*)(iii) provides that a foreign affiliate of a taxpayer resident in Canada shall determine its income or loss that would, if the Act were read without reference to paragraph 95(2)(*a*), be its income or loss from property for a taxation year that, under that paragraph, is included in computing its income or loss from an active business for the taxation year, in its calculating currency for the taxation year.

New subparagraph 95(2)(*f.2*)(iv) provides that a foreign affiliate of a taxpayer resident in Canada shall determine, in its calculating currency for a taxation year,

1. the amount of a distribution made by it or a dividend paid by it, in respect of a share of its capital stock, at any time in the taxation year,
2. the amount for which a share of its capital stock was issued by it, or the amount of any contribution received by it in respect of a share of its capital stock, at any time in the taxation year, and
3. the amount of a return, at any time in the taxation year, by it of amounts described by 2.

New subparagraph 95(2)(*f.2*)(v) provides that a foreign affiliate of a taxpayer resident in Canada shall determine, in its calculating currency for a taxation year,

1. the amount of a distribution made, or a dividend paid, in respect of a share of the capital stock of another foreign affiliate of the taxpayer (that is an excluded property of the foreign affiliate), that is received by the foreign affiliate at any time in the taxation year,
2. the amount for which a share of the capital stock of another foreign affiliate of the taxpayer that is an excluded property of the taxpayer was issued to it, or any contribution in respect of such a share made by it, at any time in the taxation year, and
3. the amount of a return, at any time in the taxation year, of amounts described by 2 that were received by the foreign affiliate.

New subparagraph 95(2)(*f.2*)(vi) provides that a foreign affiliate of a taxpayer resident in Canada shall determine each amount of a receipt or an expenditure, income or a deduction, a gain or a loss, an inclusion or an exclusion, a contribution or a return of contribution, and each other amount received, made, incurred, accrued or claimed, as the case may be, at any time in a particular taxation year of the foreign affiliate that is determined at a particular time in a taxation year in a currency other than the foreign affiliate's calculating currency for the particular taxation year, to the extent relevant in determining a particular amount described in any of subparagraphs 95(2)(*f.2*)(i), (ii), (iv) and (v) for a taxation year, by converting that amount to the foreign affiliate's calculating currency for the particular taxation year using the calculating currency exchange rate (on the day that includes that time) in respect of the exchange of the other currency for the foreign affiliate's calculating currency for the particular taxation year.

New subparagraph 95(2)(*f.2*)(vii) provides that a foreign affiliate of a taxpayer resident in Canada shall determine, where the foreign affiliate's calculating currency for a particular taxation year is different from its calculating currency for the immediately following taxation year (referred to in this subparagraph as the "subsequent taxation year"), each amount of a receipt or an expenditure, income or a deduction, a gain or a loss, an inclusion or an exclusion, a contribution or a return of contribution, and each other amount received, made, incurred, accrued or claimed, as the case may be, at any time in the particular taxation year or a preceding taxation year, to the extent relevant in determining a particular amount described in any of subparagraphs 95(2)(*f.2*)(i), (ii), (iv) and (v) for any taxation year that begins after the particular taxation year, by converting that amount to the foreign affiliate's calculating currency for the subsequent taxation year by using the transitional exchange rate for the particular taxation year.

New subparagraph 95(2)(*f.2*)(viii) provides that a foreign affiliate of a taxpayer resident in Canada shall determine each capital gain or capital loss or taxable capital gain or allowable capital loss, for a taxation year, from the disposition, at any time, of a capital property that, at the time of disposition, was not an excluded property of the foreign affiliate, in Canadian currency.

New subparagraph 95(2)(*f.2*)(ix) provides that a foreign affiliate of a taxpayer resident in Canada shall determine its income or loss, for a taxation year, from property or its income or loss, for a taxation year, from a business that is deemed by this subsection to be a business other than an active business or from a non-qualifying business (as newly defined in subsection 95(1)), in Canadian currency.

New subparagraph 95(2)(*f.2*)(x) provides that a foreign affiliate of a taxpayer resident in Canada shall determine each amount of a receipt or an expenditure, income or a deduction, a gain or a loss, an inclusion or an exclusion, a contribution or a return of contribution, and each other amount received, made, incurred, accrued or claimed, as the case may be, at any time in a particular taxation year of the foreign affiliate that is determined at a particular time in a taxation year in a currency other than Canadian currency, to the extent relevant in determining a particular amount described in subparagraph 95(2)(*f.2*)(viii) or (ix) for a taxation year or in determining the foreign affiliate's foreign accrual property income for a taxation year, by converting that amount to Canadian currency using the Canadian currency exchange rate (on the day that includes that time) in respect of the exchange of the other currency for Canadian currency.

Note that the terms "Canadian currency exchange rate", "currency exchange rate" and "transitional exchange rate" are newly defined in subsection 95(1). For further information, please refer to the commentary for those definitions.

New paragraph 95(2)(*f.2*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

However, there is a transitional rule whereby paragraph 95(2)(*f.2*) shall (applicable in respect of any disposition made before March 19, 2007 and in a taxation year, of a foreign affiliate of the taxpayer, that begins after December 20, 2002) be read as though it contained a subparagraph (viii.1) that reads as follows:

> "(viii.1) notwithstanding subparagraph (*i*), each capital gain or capital loss, taxable capital gain or allowable capital loss for a taxation year from the disposition, at any time, of an excluded property that is required to be included in computing the foreign affiliate's foreign accrual property income, in Canadian currency,"

Note that, if the taxpayer elects in writing in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, amended paragraph 95(2)(*f*), as described in the commentary above, new paragraph 95(2)(*f.1*), as described in the commentary above (being read in the manner described in the transitional rule that is explained in that commentary), and new paragraph 95(2)(*f.2*) being read in the manner described in the transitional rule, also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and before December 21, 2002.

This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

ITA
95(2)(*g*)

Paragraph 95(2)(*g*) of the Act provides that where, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a taxation year of the affiliate has earned income or incurred a loss or realized a capital gain or a capital loss in the year, in reference to any described debt and share transactions of the affiliate, the income, gain or loss, as the case may be, is nil.

For this purpose, a described debt or share transaction is any of the following:

- a debt obligation that was owing to
  - another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (referred to as a "qualified foreign corporation"), or
  - the particular affiliate by a qualified foreign corporation (subparagraph 95(2)(*g*)(i)),
- the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (subparagraph 95(2)(*g*)(ii)), or
- the disposition to a qualified foreign corporation of a share of the capital stock of another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (subparagraph 95(2)(*g*)(iii)).

Paragraph 95(2)(*g*) is amended in the following ways:

First, the preamble of paragraph 95(2)(*g*) is amended to expand the scope of application of that paragraph to not only foreign affiliates of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year, but also to foreign affiliates that are controlled foreign affiliates of the taxpayer throughout the taxation year.

Second, subparagraph 95(2)(*g*)(i) is amended to revise the concept of "qualified foreign corporation" so that it instead covers a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year.

The amendment to paragraph 95(2)(*g*) applies to taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002. However, for those taxation years of the foreign affiliate of the taxpayer that begin before 2009, paragraph 95(2)(*g*) is to be read as follows:

> (g) income earned, a loss incurred or a capital gain or capital loss realized, as the case may be, in a taxation year by a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year or that is a controlled foreign affiliate of the taxpayer throughout the taxation year, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, is deemed to be nil if it is earned, incurred or realized in reference to any of the following sources:
>
> (i) a debt obligation that was owing to
>
> (A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (which other foreign affiliate or other non-resident corporation is referred to in this paragraph as a "qualified foreign corporation"), or
>
> (B) the particular affiliate by a qualified foreign corporation,
>
> (ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or a qualified foreign corporation (which particular affiliate or which qualified foreign affiliate is referred to in this subparagraph as the "issuing corporation") by the issuing corporation, or
>
> (iii) the disposition to a qualified foreign corporation of a share of the capital stock of another qualified foreign corporation;

Note that this amendment is part of the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*g.01*)

New paragraph 95(2)(*g.01*) of the Act deals with foreign currency hedging agreements. In general terms, that paragraph provides that a foreign currency income, gain or loss derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency where the agreement can reasonably be considered to have been made by a foreign affiliate of a taxpayer to reduce the affiliate's risk (with respect to any source, any particular income, gain or loss determined in reference to which is deemed by paragraph 95(2)(*g*) to be nil) of fluctuations in the value of currency is, to the extent of the absolute value of the particular income, gain or loss, deemed to be nil. This amendment ensures that income, gain or loss from a hedge is deemed to be nil if the hedged income, loss or gain is deemed to be nil.

New paragraph 95(2)(*g.01*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that new paragraph 95(2)(*g.01*) is part of the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*g.02*)

New paragraph 95(2)(*g.02*) of the Act ensures that, in applying subsection 39(2) of the Act for the purpose of subdivision i of the Act (except sections 94 to 94.4 of the Act), foreign exchange gains and losses of a foreign affiliate of a taxpayer in respect of excluded property (as defined in subsection 95(1)) are computed separately from the affiliate's foreign exchange gains and losses in respect of other property. This amendment facilitates the computation of the foreign accrual property income and the tax surpluses and deficits of a foreign affiliate of a taxpayer.

New paragraph 95(2)(*g.02*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. Note that new paragraph 95(2)(*g.02*) is part of the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*g.03*)

New paragraph 95(2)(*g*) of the Act addresses debt obligations owing by a "particular foreign affiliate" to a "qualified foreign affiliate" or owing by a "qualified foreign affiliate" to the "particular foreign affiliate". However, that paragraph does not address situations where the debtor or creditor under the debt obligation is a partnership of which the particular foreign affiliate or a qualified foreign affiliate is a member. New paragraph 95(2)(*g.03*) is intended to address such situations.

New paragraph 95(2)(*g.03*) provides that, if at any time a particular foreign affiliate referred to in paragraph 95(2)(*g*) is a member of a partnership or a qualified foreign affiliate referred to in that paragraph is a member of a partnership, the rules set out in subparagraphs 95(2)(*g.03*)(i) to (v) apply.

Subparagraphs 95(2)(*g.03*)(i) and (ii) are relevant where a partnership of which the particular foreign affiliate is a member is the creditor or the debtor under the debt obligation. Similarly, subparagraphs 95(2)(*g.03*)(iii) and (iv) are relevant where a partnership of which the qualified foreign affiliate is a member is the creditor or the debtor under the debt obligation. For example, as can be noted from the description of those four subparagraphs below, if a partnership of which the particular foreign affiliate is a member is the creditor under the debt obligation and a partnership of which the qualified foreign affiliate is a member is the debtor under the debt obligation, subparagraphs 95(2)(*g.03*)(i) and (iv) would be relevant.

Subparagraph 95(2)(*g.03*)(i) provides that, in applying this paragraph, where a debt obligation is owing at that time by a debtor to the partnership of which the particular foreign affiliate is a member, the debt obligation is deemed to be owing at that time by the debtor to the particular foreign affiliate in the proportion that the particular foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation.

Subparagraph 95(2)(*g.03*)(ii) provides that, in applying this paragraph, where a debt obligation is owing at that time to a creditor by the partnership of which the particular foreign affiliate is a member, the debt obligation is deemed to be owing at that time to the creditor by the particular foreign affiliate in the proportion that the particular foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation.

Subparagraph 95(2)(*g.03*)(iii) provides that, in applying paragraph 95(2)(*g*) and this paragraph, where a debt obligation is owing at that time by a debtor to the partnership of which the qualified foreign affiliate is a member, the debt obligation is deemed to be owing at that time by the debtor to the qualified foreign affiliate in the proportion that the qualified foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation.

Subparagraph 95(2)(*g.03*)(iv) provides that, in applying paragraph 95(2)(*g*) and this paragraph, where a debt obligation is owing at that time to a creditor by the partnership of which the qualified foreign affiliate is a member, the debt obligation is deemed to be owing at that time to the creditor by the qualified foreign affiliate in the proportion that the qualified foreign affiliate shared in any income earned, loss incurred or capital gain or capital loss realized by the partnership in respect of the debt obligation.

Subparagraph 95(2)(*g.03*)(v) applies in respect of the computation of the particular foreign affiliate's income or loss from a partnership. Under that subparagraph, any income earned, loss incurred or capital gain or capital loss realized, as the case may be, by the partnership — in respect of the portion of a debt obligation owing to or owing by the partnership that is deemed by any of subparagraphs 95(2)(*g.03*)(i) to (iv) to be a debt obligation owing to or owing by the particular foreign affiliate (referred to as the "allocated debt obligation") — because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, that is attributable to the allocated debt obligation is deemed to be nil to the extent that paragraph 95(2)(*g*) would, if the rules in subparagraphs 95(2)(*g.03*)(i) to (iv) were applied, have applied to the particular foreign affiliate, to deem the income earned, loss incurred or capital gain or capital loss realized, as the case may be, by the particular foreign affiliate to be nil.

Thus, subparagraph 95(2)(*g.03*)(v) is the operational rule (in place of paragraph 95(2)(*g*)) where a partnership of which the particular foreign affiliate is a member, is the creditor or the debtor under the debt obligation. On the other hand, where the particular foreign affiliate itself is the creditor (or the debtor) under the debt obligation and a partnership of which the qualified foreign affiliate is a member is the debtor (or the creditor) under the debt obligation, the rules in subparagraphs 95(2)(*g.03*)(iii) and (iv) facilitate the operation of paragraph 95(2)(*g*) as the operational rule.

New paragraph 95(2)(*g.03*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

ITA
95(2)(*i*)

Paragraph 95(2)(*i*) of the Act provides a rule under which certain gains or losses of a foreign affiliate of a taxpayer are deemed to be a gain or loss, as the case may be, from the disposition of an excluded property (as defined in subsection 95(1)) and are therefore not included in computing the affiliate's foreign accrual property income. Under this paragraph, the gain or loss that is eligible for this treatment is a gain or loss of the affiliate from the settlement or extinguishment of a debt that related at all times to the acquisition of an excluded property.

Paragraph 95(2)(*i*) is amended to provide that any income, gain or loss of a foreign affiliate of a taxpayer or of a partnership of which a foreign affiliate of a taxpayer is a member (the "debtor"), for a taxation year or fiscal period of the debtor, as the case may be, is deemed to be income, a gain or a loss from the disposition of an excluded property of the debtor, if the income, gain or loss is

1. derived from the settlement or extinguishment of a debt of the debtor all or substantially all of the proceeds from which
    - were used to acquire property, if at all times after the time at which the debt became debt of the debtor and before the time of that settlement or extinguishment, the property (or property substituted for the property) was property of the debtor and was (if the debtor were a foreign affiliate of the taxpayer) or would be excluded property of the debtor,
    - were used at all times to earn income from an active business carried on by the debtor, or
    - were used by the debtor for a combination of those uses (subparagraph (i) of paragraph 95(2)(*i*)),
2. derived from the settlement or extinguishment of a debt of the debtor all of the proceeds from which were used to settle or extinguish a debt referred to in 1 or this subparagraph (subparagraph (ii) of paragraph 95(2)(*i*)), or
3. derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the debtor to reduce its risk, with respect to a debt referred to in 1 or 2, of fluctuations in the value of the currency in which the debt was denominated (subparagraph (iii) of paragraph 95(2)(*i*)).

These amendments to paragraph 95(2)(*i*) expand the scope of that paragraph so that

- it applies more broadly in respect of indebtedness used to fund active business operations or used to refinance such indebtedness,
- it applies in respect of certain foreign currency hedging agreements that are related to the indebtedness,

- it applies in respect of debtors that are either a foreign affiliate of a taxpayer or of a partnership of which a foreign affiliate of a taxpayer is a member, and
- it applies to income, gains or losses of the debtor, rather than only to gains or losses of the debtor.

These amendments to paragraph 95(2)(*i*) apply to taxation years of a foreign affiliate, of a taxpayer, that begin after December 20, 2002. Note that these amendments are part of the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*l*)

Paragraph 95(2)(*l*) of the Act includes in the income, of a foreign affiliate of a taxpayer, from property the affiliate's income derived from a business the principal purpose of which is to derive income from trading or dealing in certain indebtedness. Where the business of the affiliate is described in subparagraph 95(2)(*l*)(iii) and the taxpayer is described in subparagraph 95(2)(*l*)(iv), paragraph 95(2)(*l*) does not apply to the affiliate.

A business is described by subparagraph 95(2)(*l*)(iii) if it is a business that is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the country under whose laws the affiliate was formed or continued and exists and is governed and in which the business is principally carried on.

Subparagraph 95(2)(*l*)(iii) is amended so that the business described by that subparagraph is a business that is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

- of each country in which the business is carried on through a permanent establishment (as defined by proposed new section 8202 of the Regulations) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,
- of the country in which the business is principally carried on, or
- if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Amended subparagraph 95(2)(*l*)(iii) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

ITA
95(2)(*n*)

Paragraph 95(2)(*a*) of the Act includes, in computing the income from an active business for a taxation year of a foreign affiliate of a taxpayer resident in Canada in respect of which the taxpayer has a "qualifying interest" throughout the year, certain amounts (described in the various subparagraphs of paragraph 95(2)(*a*)) that would otherwise be the foreign affiliate's income from property.

For example, subparagraph 95(2)(*a*)(ii) deals with the situation where the foreign affiliate derives income from certain amounts paid or payable to it by another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (or from a partnership of which that other foreign affiliate is a member at the end of the year).

Paragraph 95(2)(*m*) determines whether a taxpayer has a "qualifying interest" in respect of a non-resident corporation that is a foreign affiliate of the taxpayer. This paragraph will not apply if the non-resident corporation is not a foreign affiliate of the taxpayer.

New paragraph 95(2)(*n*) accommodates a wider variety of corporate structures where the taxpayer has an indirect interest in a non-resident corporation.

New paragraph 95(2)(*n*) provides a rule for the purposes of

- applying paragraphs 95(2)(*a*) and (*g*) and subsections 95(2.2) and (2.21),
- applying paragraph (*b*) of the description of A in the formula in the definition "foreign accrual property income" in subsection 95(1), and
- applying paragraph (*d*) of the definition "exempt earnings", and paragraph (*c*) of the definition "exempt loss", in subsection 5907(1) of the Regulations.

Under that rule, a non-resident corporation is – if two conditions are met – deemed to be, at a particular time,

- a foreign affiliate of a particular corporation resident in Canada, and
- a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest.

The first condition is that, at the particular time, the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) to the particular corporation.

The second condition is that, at the particular time, that other corporation has a qualifying interest in respect of the non-resident corporation.

New paragraph 95(2)(*n*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, where the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, this new paragraph applies to the taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

Example

Facts:

1. *Canco1 is a corporation resident in Canada.*
2. *FA1 is a non-resident corporation. Canco1 owns all of the issued and outstanding shares in FA1.*
3. *Canco2 is a corporation resident in Canada. Canco1 owns all of the issued and outstanding shares in Canco2.*
4. *FA2 is a non-resident corporation. Canco2 owns all of the issued and outstanding shares of FA2.*

Application of paragraph 95(2)(*n*):

In the absence of paragraph 95(2)(n), FA1 would not be a "foreign affiliate of Canco2 in respect of which Canco2 has a qualifying interest" because FA1 is not a foreign affiliate of Canco2 within the meaning of the definition "foreign affiliate" in subsection 95(1). Paragraph 95(2)(m) is of no assistance in this regard. Thus, income derived by FA2 from amounts paid or payable to it by FA1 could not satisfy subparagraph 95(2)(a)(ii) in respect of Canco2.

Under paragraph 95(2)(n), and only for the limited purposes outlined in paragraph 95(2)(n), FA1 is deemed to be a foreign affiliate of Canco2 and is deemed to be a foreign affiliate of Canco2 in respect of which Canco2 has a qualifying interest because

- *Canco1 and Canco2 are related,*
- *FA1 is a foreign affiliate of Canco1, and*
- *Canco1 has, because of paragraph 95(2)(m), a qualifying interest in respect of FA1.*

ITA
95(2)(*o*)

New paragraph 95(2)(*o*) of the Act defines the expression "qualifying member" of a partnership. This new definition is relevant for the amended definition "investment business" in subsection 95(1) and for amended subparagraph 95(2)(*a*)(ii) and new paragraphs 95(2)(*r*) and (*t*).

New paragraph 95(2)(*o*) provides that a particular person is a "qualifying member" of a partnership at a particular time if, at that time, the particular person is a member of the partnership and one of two alternate tests is met.

The first alternate test is that throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member is a member of the partnership, the particular person is, on a regular, continuous and substantial basis, either

- actively engaged in those activities, of the principal business of the partnership carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of that principal business, or
- actively engaged in those activities, of a particular business carried on in that fiscal period by the particular person (otherwise than as a member of a partnership) that is similar to the principal business carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of the particular business.

The second alternate test is that, throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership

- the total of the fair market value of all partnership interests in the partnership owned by the particular person was equal to or greater than 1 per cent of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership, and
- the total of the fair market value of all partnership interests in the partnership owned by the particular person or by persons (other than trusts) related to the particular person was equal to or greater than 10 per cent of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership.

New paragraph 95(2)(*o*) applies to taxation years that end after 1999. New paragraph 95(2)(*o*) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*p*)

New paragraph 95(2)(*p*) of the Act provides a definition for the expression "qualifying shareholder" of a corporation. This new expression is relevant for the amended definition "investment business" in subsection 95(1) of the Act. For more detail, please refer to the commentary for the amendments to that definition.

New paragraph 95(2)(*p*) provides that a particular person is a "qualifying shareholder" of a corporation at any time if throughout the period, in the taxation year of the corporation that includes that time, during which the particular person is a shareholder of the corporation, all four of the following conditions are met:

- the particular person owns 1 per cent or more of the issued and outstanding shares (having full voting rights under all circumstances) of the capital stock of the corporation,
- the particular person, or the particular person and persons (other than trusts) related to the particular person, own 10 per cent or more of the issued and outstanding shares (having full voting rights under all circumstances) of the capital stock of the corporation,
- the total of the fair market value of all the issued and outstanding shares of the capital stock of the corporation owned by the particular person is 1 per cent or more of the total fair market value of all the issued and outstanding shares of the capital stock of the corporation, and
- the total of the fair market value of all the issued and outstanding shares of the capital stock of the corporation owned by the particular person or by persons (other than trusts) related to the particular person is 10 per cent or more of the total fair market value of all the issued and outstanding shares of the capital stock of the corporation.

New paragraph 95(2)(*p*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. New paragraph 95(2)(*p*) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*q*)

New paragraph 95(2)(*q*) of the Act provides for two look-through rules for the purposes of applying new paragraphs 95(2)(*o*) and (*p*).

The first look-through rule contemplates the situation where an interest in a partnership or shares of the capital stock of a corporation are property of a partnership. Under that rule, if interests in a partnership or shares of the capital stock of a corporation (such interests or shares referred to as "equity interests") are, at any time, property of a partnership or are deemed by paragraph 95(2)(*q*) to be, at any time, property of the partnership, the equity interests are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the equity interests that

- the fair market value at that time of the member's partnership interest in the partnership

is of

- the fair market value at that time of all partnership interests in the partnership.

The second look-through rule contemplates the situation where an interest in a partnership or shares of the capital stock of a corporation are property of a non-discretionary trust. Under that rule, if interests in a partnership or shares of the capital stock of a corporation (which interests or shares are referred to as "equity interests") are, at any time, property of a non-discretionary trust (within the meaning assigned by subsection 17(15)) or are deemed under paragraph 95(2)(*q*) to be, at any time, property of a non-discretionary trust, the equity interests are deemed to be owned at that time by each beneficiary under that trust in a proportion equal to that proportion of the equity interests that

- the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

- the fair market value at that time of all beneficial interests in the trust.

New paragraph 95(2)(*q*) applies to taxation years that end after 1999. New paragraph 95(2)(*q*) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

ITA
95(2)(*r*)

New paragraph 95(2)(*r*) of the Act provides that, in applying paragraph 95(2)(*a*) and in applying paragraph (*d*) of the definition "exempt earnings", and paragraph (*c*) of the definition "exempt loss", in subsection 5907(1) of the Regulations, a partnership is deemed to be, at any time, a partnership of which a foreign affiliate – of a particular corporation resident in Canada and in respect of which foreign affiliate the particular corporation has a qualifying interest – is a qualifying member if, at that time,

- a particular foreign affiliate – of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) to the particular corporation – is a member of the partnership,
- that other corporation resident in Canada has a qualifying interest in respect of the particular foreign affiliate, and
- the particular foreign affiliate is a qualifying member of the partnership.

New paragraph 95(2)(*r*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Note that new paragraph 95(2)(*r*) is part of the Global Section 95 Election package described at the beginning of the commentary to section 95.

Example

Facts:

1. *Canco owns all the shares of Cansub.*
2. *Cansub owns all the shares of FA1.*
3. *FA1 is a "qualifying member" (as defined in paragraph 95(2)(o)) of the partnership "P".*
4. *Canco owns all the shares of FA2.*

Application of paragraph 95(2)(*r*):

Partnership P is deemed to be a partnership of which FA2 (the particular foreign affiliate) is a qualifying member because:

- *Canco (the particular corporation) has a qualifying interest in FA2 (condition in preamble to 95(2)(r)),*
- *FA1 (the particular foreign affiliate) is a member of P (condition in subparagraph 95(2)(r)(i));*
- *FA1 is a foreign affiliate of Cansub, which is a corporation resident in Canada that is related to Canco (condition in subparagraph 95(2)(r)(i)),*
- *Cansub has a qualifying interest in FA1 (condition in subparagraph 95(2)(r)(ii)), and*
- *FA1 is a qualifying member of P (condition in subparagraph 95(2)(r)(iii)).*

ITA
95(2)(*s*)

New paragraph 95(2)(*s*) of the Act defines the expression "designated corporation", which is used in the amended definition "investment business" in subsection 95(1). That paragraph provides that, in applying the definition "investment business" in subsection 95(1), a particular corporation is, at any time, a designated corporation in respect of a foreign affiliate of a taxpayer if, at that time,

- a qualifying shareholder of the foreign affiliate or a person related to such a qualifying shareholder is a qualifying shareholder of the particular corporation,
- the particular corporation
  - is controlled by a qualifying shareholder of the foreign affiliate, or
  - would be controlled by a particular qualifying shareholder of the foreign affiliate if the particular qualifying shareholder of the foreign affiliate owned each share of the capital stock of the particular corporation that is owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate, and
- the total of all amounts each of which is the fair market value of a share of the capital stock of the particular corporation owned by a qualifying shareholder of the foreign affiliate or by a person related to that qualifying shareholder of the foreign affiliate is greater than 50 per cent of the total fair market value of all the issued and outstanding shares of the capital stock of the particular corporation.

The expression "qualifying shareholder" is defined in new paragraph 95(2)(*p*).

New paragraph 95(2)(*s*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Note that this new paragraph is included in the Global Section 95 Election package described in the beginning of the commentary to section 95.

Example

***Facts*:**

1. *Corporation 1 controls Corporations 2 and 3.*
2. *Corporation 2 is a qualifying shareholder of FA1.*
3. *Corporation 1 owns shares that represent more than 50% of the fair market value of all issued shares of the capital stock of Corporations 2 and 3.*
4. *Corporation 1 is a qualifying shareholder of Corporation 3.*

Application of paragraph 95(2)(*s*):

Corporation 3 (the particular corporation) is a designated corporation in respect of FA1 because

- *Corporation 1*
  - *is related to Corporation 2,*
  - *is a qualifying shareholder of Corporation 3, and*
  - *owns shares that represent more than 50% of the fair market value of all issued shares of the capital stock of Corporation 3, and*
- *Corporation 3 would be controlled by Corporation 2 if Corporation 2 owned each share of the capital stock of Corporation 3 that is owned by Corporation 1.*

ITA
95(2)(*t*)

New paragraph 95(2)(*t*) of the Act defines the expression "designated partnership", which is used in the amended definition "investment business" in subsection 95(1). That paragraph provides that, in applying the definition "investment business" in subsection 95(1), in respect of a business carried on by a foreign affiliate of a taxpayer in a taxation year, a particular partnership is, at any time, a designated partnership in respect of the foreign affiliate of the taxpayer if, at that time,

- the foreign affiliate or a person related to the foreign affiliate is a qualifying member of the particular partnership, and
- the total of all amounts each of which is the fair market value of a partnership interest in the particular partnership held by the foreign affiliate, by a person related to the foreign affiliate (where the affiliate carries on, at that time, the business as a qualifying member of another partnership) or by a qualifying member of the other partnership is greater than 50 per cent of the total fair market value of all partnership interests in the particular partnership owned by all members of the particular partnership.

The expression "qualifying member" is defined in new paragraph 95(2)(*o*).

New paragraph 95(2)(*t*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. Note that this new paragraph is included in the Global Section 95 Election package described in the beginning of the commentary to section 95.

ITA
95(2)(*u*)

New paragraph 95(2)(*u*) provides two rules to deal with cases where a member of a partnership is a member of another partnership.

The first rule provides that, if any entity is a member of a particular partnership that is a member of another partnership, the entity is deemed to be a member of the other partnership for the purpose of

- applying the second rule,
- applying the reference, in paragraph 95(2)(*a*), to "a member" of a partnership,
- paragraphs 95(2)(*a.1*) to (*b*), (*g.03*) and (*o*),
- the definition "taxable Canadian business" in subsection 95(1), and
- paragraphs (*b*) and (*c*) of the definition "investment business" in subsection 95(1).

The second rule provides that, in applying paragraphs 95(2)(*g.03*) and the definitions "designated taxable Canadian property" and "taxable Canadian business" in subsection (1), the entity is deemed to have, directly, rights to the income or capital of the other partnership, to the extent of the entity's direct and indirect rights to that income or capital.

New paragraph 95(2)(*u*) applies in respect of taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, where the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, this new paragraph applies in respect of the taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

ITA
95(2)(*v*)

New paragraph 95(2)(*v*) of the Act provides rules for the purposes of applying new paragraph 95(2)(*p*).

The first such rule is contained in subparagraph 95(2)(*v*)(i). It is a share ownership rule that provides that, where shares of the capital stock of any corporation (the "issuing corporation") are, at any time, owned by a corporation (the "holding corporation") or are deemed under this paragraph to be, at any time, owned by a corporation (the "holding corporation"), those shares are deemed to be owned at that time by each shareholder of the holding corporation in a proportion equal to the proportion of those shares that

- the fair market value, at that time, of the shares of the capital stock of the issuing corporation that are owned by the shareholder

is of

- the fair market value, at that time, of all the issued and outstanding shares of the capital stock of the issuing corporation.

The second such rule is contained in subparagraph 95(2)(*v*)(ii). It provides that a person who is deemed by subparagraph 95(2)(*v*)(i) to own, at any time, shares of the capital stock of a corporation is deemed to be, at that time, a shareholder of the corporation.

New paragraph 95(2)(*v*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

ITA
95(2)(*w*)

New paragraph 95(2)(*w*) applies where a foreign affiliate of a corporation resident in Canada carries on an active business in more than one country.

That paragraph provides that

- where the business is carried on in a country other than Canada, the foreign affiliate is deemed to carry on that business in that country only to the extent that the profit or loss from that business can reasonably be attributed to a permanent establishment situated in that country, and
- where the business is carried on in Canada, the foreign affiliate is deemed to carry on that business in Canada only to the extent that the income from the active business is subject to tax under Part I of the Act.

New paragraph 95(2)(*w*) applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

ITA
95(2)(*x*)

New paragraph 95(2)(*x*) of the Act provides that the loss from an active business, from a non-qualifying business or from property (as the case may be) of a foreign affiliate of a taxpayer resident in Canada for a taxation year is the amount of that loss (if any) that is computed by applying the provisions in this subdivision with respect to the computation of income from the active business, from the non-qualifying business or from property (as the case may be) of the foreign affiliate for the taxation year with any modifications that the circumstances require.

New paragraph 95(2)(*x*) applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

ITA
95(2)(*y*)

New paragraph 95(2)(*y*) of the Act provides a rule for the purpose of paragraph 95(2)(*a*) and for the purpose of applying subsections 95(2.2) and (2.21) for the purpose of applying that paragraph.

New paragraph 95(2)(*y*) provides that, in determining whether a non-resident corporation is, at any time, a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest, where interests in any partnership or shares of the capital stock of any corporation (which interests or shares are referred to as "equity interests") are, at that time, property of a particular partnership or are deemed under this paragraph to be, at any time, property of the particular partnership, the equity interests are deemed to be owned at that time by each member of the particular partnership in a proportion equal to the proportion of the equity interests that

- the fair market value, at that time, of the member's partnership interest in the particular partnership

is of

- the fair market value, at that time, of all members' partnership interests in the particular partnership.

New paragraph 95(2)(*y*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

ITA
95(2)(*z*)

New paragraph 95(2)(*z*) of the Act applies where a particular foreign affiliate of a taxpayer — in respect of which the taxpayer has a qualifying interest or that is a controlled foreign affiliate of the taxpayer — is a member of a partnership.

Under that new paragraph, the particular foreign affiliate's foreign accrual property income or loss in respect of the taxpayer for a taxation year shall not include any income or loss of the partnership to the extent that the income or loss

- is attributable to the foreign accrual property income or loss of a foreign affiliate of the partnership that is also a foreign affiliate of the taxpayer (referred to as the "second foreign affiliate") in respect of which the taxpayer has a qualifying interest or that is a controlled foreign affiliate of the taxpayer, and
- is, because of paragraph 95(2)(*a*) as applied in respect of the taxpayer, included in computing the income or loss from an active business of the second foreign affiliate for a taxation year.

New paragraph 95(2)(*z*) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. It is included in the Section 95 Global Election package described at the beginning of the commentary to section 95.

Rules for the definition "controlled foreign affiliate"

ITA
95(2.01)

New subsection 95(2.01) of the Act provides rules for the purposes of applying paragraph (*b*) of the definition "controlled foreign affiliate" in subsection 95(1) and for the purposes of applying this subsection.

ITA
95(2.01)(*a*)

New paragraph 95(2.01)(*a*) of the Act provides that shares of the capital stock of a corporation that are at any time owned by, or that are deemed by subsection 95(2.01) to be at any time owned by, another corporation are deemed to be, at that time, owned by, or property of, as the case may be, each shareholder of the other corporation in the proportion that

- the fair market value at that time of the shares of the capital stock of the other corporation that, at that time, are owned by, or are property of, the shareholder

is of

- the fair market value at that time of all the issued and outstanding shares of the capital stock of the other corporation.

ITA
95(2.01)(*b*)

New paragraph 95(2.01)(*b*) of the Act provides that shares of the capital stock of a corporation that are, or are deemed by subsection 95(2.01) to be, at any time, property of a partnership, are deemed to be, at that time, owned by, or property of, as the case may be, each member of the partnership in the proportion that

- the fair market value at that time of the member's partnership interest in the partnership

is of

- the fair market value at that time of all partnership interests in the partnership.

ITA
95(2.01)(*c*)

New paragraph 95(2.01)(*c*) of the Act provides that shares of the capital stock of a corporation that are at any time owned by, or that are deemed by subsection 95(2.01) to be at any time owned by, a non-discretionary trust (within the meaning assigned by subsection 17(15) of the Act) other than an exempt trust (as newly defined in subsection 95(1)) are deemed to be, at that time, owned by, or property of, as the case may be, each beneficiary of the trust in the proportion that

- the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

- the fair market value at that time of all beneficial interests in the trust.

ITA
95(2.01)(*d*)

New paragraph 95(2.01)(*d*) of the Act provides that all of the shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a particular trust (other than an exempt trust as newly defined by subsection 95(1) or a non-discretionary trust within the meaning assigned by subsection 17(15) of the Act) are deemed to be, at that time, owned by, or property of, as the case may be,

- each beneficiary of the particular trust at that time, and
- each settlor (within the meaning assigned by subsection 17(15)) in respect of the particular trust at that time.

ITA
95(2.01)

Coming-into-force

Subsection 95(2.01) of the Act applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

Rule against double-counting

ITA
95(2.02)

New subsection 95(2.02) of the Act provides an interpretation rule in applying the assumption in new amended paragraph (*b*) of the definition "controlled foreign affiliate" in subsection 95(1) in respect of a taxpayer resident in Canada to determine whether a foreign affiliate of the taxpayer is at any time a controlled foreign affiliate of the taxpayer. That rule provides that nothing in that paragraph (*b*) or in new subsection 95(2.01) is to be read or construed as requiring an interest (or for civil law a right) in a share of the capital stock of the foreign affiliate of the taxpayer owned at that time by the taxpayer to be taken into account more than once.

Subsection 95(2.02) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 27, 2004.

Rule for the definition "investment business"

ITA
95(2.1)

Subsection 95(2.1) of the Act provides a rule for the purpose of the arm's length test in paragraph (*a*) of the definition "investment business" in subsection 95(1). Under this rule, a foreign affiliate of a taxpayer, the taxpayer and, in certain circumstances, a regulated financial institution in Canada of which the taxpayer is a subsidiary wholly-owned corporation, are considered to be dealing with each other at arm's length in respect of the entering into (and the execution of) agreements that provide for the purchase or sale, or exchange, of currency where all four of the conditions specified in paragraphs 95(2.1)(*a*) to (*d*) are satisfied.

The first condition, as specified in paragraph 95(2.1)(*a*), is that the taxpayer be (or be a corporation all of the issued shares of which are owned by a corporation that is) a bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities, the business activities of which are by law subject to the supervision of the Superintendent of Financial Institutions or a similar provincial authority.

The second condition, as specified in paragraph 95(2.1)(*b*), is that the agreements be swap agreements, forward purchase or sale agreements, forward rate agreements, futures agreements, options or rights agreements or similar agreements.

The third condition, as specified in paragraph 95(2.1)(*c*), is that the foreign affiliate entered into the agreements in the course of a business carried on principally with arm's length persons in the country in which the affiliate was formed (or continued) and exists and is governed, and in which the business is principally carried on by it.

The fourth condition, as specified in paragraph 95(2.1)(*d*), is that the terms and conditions of the sale or exchange be arm's length terms and conditions.

Subsection 95(2.1) permits a foreign affiliate of a taxpayer to deal with Canadian financial institutions in currency transactions entered into in the course of a business carried on by the affiliate principally with arm's length persons in the foreign country under whose laws the affiliate was incorporated, exists and is governed, and in which the business is principally carried on. Such currency transactions of the affiliate are afforded the same tax treatment as that given to similar transactions conducted with foreign financial institutions.

Subsection 95(2.1) is amended to revise the third condition, as specified in paragraph 95(2.1)(*c*). That third condition, as revised, would require that the foreign affiliate entered into the agreements in the course of a business carried on by the affiliate and that

- the business is carried on by the affiliate principally in a country (other than Canada) and principally with persons with whom the affiliate deals at arm's length, and
- the business activities of the affiliate are regulated in that country.

Amended subsection 95(2.1) will, for example, accommodate currency transactions of certain regulated foreign affiliates (of taxpayers resident in Canada described by the first condition) that carry on an arm's length foreign business principally in a country different from the affiliate's country of incorporation or continuation if the foreign business activities are regulated in the country in which the foreign business is principally carried on and in the country under whose laws the affiliate was incorporated or last continued.

New paragraph 95(2.1)(*c*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Note that new paragraph 95(2.1)(*c*) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

Rule for subsection 95(2)

ITA
95(2.2)

Subsection 95(2.2) of the Act provides rules, in paragraphs 95(2.2)(*a*) and (*b*), for the purpose of applying subsection 95(2).

Paragraph 95(2.2)(*a*) provides that, in certain circumstances, a non-resident corporation that was not a "foreign affiliate of a taxpayer in respect of which the taxpayer had a qualifying interest throughout a taxation year" but was such a foreign affiliate at the beginning or end of that year is deemed to be such a foreign affiliate of the taxpayer throughout that year. Those circumstances are that a person (referred to for convenience as the "relevant party") has, in that year, acquired or disposed of shares of the capital stock of that non-resident corporation or any other corporation and, because of that disposition or acquisition, that non-resident corporation became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest.

Paragraph 95(2.2)(*b*) provides that, in certain circumstances, a non-resident corporation that was not related to a taxpayer and to a foreign affiliate of the taxpayer throughout a taxation year but was so related at the beginning or end of that year is deemed to be related throughout that year to the taxpayer and to the foreign affiliate. Those circumstances are that a person (referred to for convenience as the "relevant party") has, in that year, acquired or disposed of shares of the capital stock of that non-resident corporation or any other corporation and, because of that disposition or acquisition, that non-resident corporation became or ceased to be a non-resident corporation that was related to the foreign affiliate and to the taxpayer.

Subsection 95(2.2) is amended in a number of ways.

First, the preamble of subsection 95(2.2) is amended to ensure that that subsection does not apply for the purpose of paragraphs 95(2)(*f*) and (*f.1*).

Second, paragraph 95(2.2)(*a*) is amended so that the "relevant party" mentioned above can be either a person or a partnership.

Third, similarly, paragraph 95(2.2)(*b*) is amended so that the "relevant party" mentioned above can be either a person or a partnership, rather than only a person.

Fourth, paragraph 95(2.2)(*b*) is amended so that a non-resident corporation that was not related to a taxpayer or to a taxpayer and a foreign affiliate of the taxpayer, as the case may be, throughout a particular taxation year is deemed to be related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer throughout that year if

- a relevant party has, in that year, acquired or disposed of shares of the capital stock of the non-resident corporation or any other corporation and, because of that acquisition or disposition, the non-resident corporation became (or would have become, if paragraph 251(5)(*b*) of the Act did not apply to rights contained in the agreement under which the person acquired the shares), or ceased to be, a non-resident corporation that was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer, and
- at the beginning, or at the end, of that year, the non-resident corporation was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer.

In this regard, note that the addition of the reference to paragraph 251(5)(*b*) permits paragraph 95(2.2)(*b*) to apply where the relevant commercial arrangements involve a right to acquire shares which is then exercised.

Fifth, consequential to amendments to paragraph 95(2)(*a*) in this set of proposals, subsection 95(2.2) is amended as follows:

- paragraph 95(2.2)(*b*) is repealed,
- paragraph 95(2.2)(*a*) ceases to be a separate paragraph and is joined to the preamble of subsection 95(2.2) to become new subsection 95(2.2), and
- subparagraphs 95(2.2)(*a*)(i) and (ii) become new paragraphs 95(2.2)(*a*) and (*b*).

The first and second of these five amendments to subsection 95(2.2) apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

The third and fourth of these five amendments to subsection 95(2.2) apply to taxation years, of a foreign affiliate, that end after 1999 and begin before 2009.

The fifth of these five amendments to subsection 95(2.2) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 2008.

However, if a taxpayer elects in writing and files that election with the Minister of National Revenue on or before the filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, the first and fourth of these five amendments to subsection 95(2.2) also apply to taxation years, of all the taxpayer's foreign affiliates, that begin after 1994 and end before 2000. That election also affects the coming-into-force date for new subsection 95(2.21) in this set of proposals; please refer to the commentary for that subsection for further detail.

This set of proposals provides that, where such an election is made, the Minister of National Revenue can, notwithstanding subsections 152(4) to (5) of the Act, make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

Rule re subsection 95(2.2)

ITA
95(2.21)

New subsection 95(2.21) of the Act ensures that subsection 95(2.2) does not apply for the purpose of paragraph 95(2)(*a*) in respect of any income or loss referred to in that paragraph, of a particular foreign affiliate of the taxpayer, to the extent that that income or loss can reasonably be considered to have been realized or to have accrued before the earlier of two times.

The first of these two times is the time at which the particular affiliate became, as determined without reference to subsection 95(2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest.

The second of these two times is the time at which the particular affiliate became, as determined without reference to subsection 95(2.2), a foreign affiliate of another person resident in Canada in respect of which the other person resident in Canada had a qualifying interest, where

- the taxpayer is a corporation,
- the taxpayer did not exist at the beginning of the taxation year,
- the particular affiliate became a foreign affiliate of the taxpayer in the taxation year because of a disposition, in the taxation year, of shares of the capital stock of the particular affiliate to the taxpayer by the other person resident in Canada, and
- the other person resident in Canada was, immediately before that disposition, related to the taxpayer.

New subsection 95(2.21) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, because of amendments to subsection 95(2.2) applicable to taxation years, of a foreign affiliate of a taxpayer, that begin after 2008, this set of proposals provides for a transitional version of subsection 95(2.21) applicable to foreign affiliate taxation years that end after 1999 and begin before 2009. Those amendments to subsection 95(2.2) are described in the fifth enumerated amendment to that subsection described in the commentary for that subsection. That transitional version of subsection 95(2.21) reads as follows:

(2.21) Subsection (2.2) does not apply for the purpose of paragraph (2)(*a*) in respect of any income or loss referred to in that paragraph, of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year of the particular affiliate or to which the taxpayer is related throughout the taxation year, to the extent that that income or loss can reasonably be considered to have been realized or to have accrued

(a) before the earlier of

(i) the time at which the particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest or to which the taxpayer is related, and

(ii) the time at which the particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of another person resident in Canada in respect of which the other person resident in Canada had a qualifying interest or to which the other person resident in Canada is related, where

(A) the taxpayer is a corporation,

(B) the taxpayer did not exist at the beginning of the taxation year,

(C) the particular affiliate became a foreign affiliate of the taxpayer in the taxation year because of a disposition, in the taxation year, of shares of the capital stock of the particular affiliate to the taxpayer by the other person resident in Canada, and

(D) the other person resident in Canada was, immediately before that disposition, related to the taxpayer; or

(b) before the earlier of

(i) the time at which a non-resident corporation (other than the particular affiliate), or a foreign affiliate of the taxpayer (other than the particular affiliate), referred to in paragraph (2.2)(*a*) became, as determined without reference to subsection (2.2),

(A) a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, or

(B) related to the taxpayer and to the particular affiliate, and

(ii) the time at which a non-resident corporation (other than the particular affiliate), or a foreign affiliate of the taxpayer (other than the particular affiliate), referred to in paragraph (2.2)(a) became, as determined without reference to subsection (2.2), a foreign affiliate, of another person resident in Canada, in respect of which the other person resident in Canada had a qualifying interest (or became, as determined without reference to subsection (2.2), related to the other person resident in Canada and to the particular affiliate), where

(A) the taxpayer is a corporation,

(B) the taxpayer did not exist at the beginning of the taxation year,

(C) the particular affiliate became a foreign affiliate of the taxpayer in the taxation year because of a disposition, in the taxation year, of shares of the capital stock of the particular affiliate to the taxpayer by the other person resident in Canada, and

(D) the other person resident in Canada was, immediately before that disposition, related to the taxpayer.

New subsection 95(2.21) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. This set of proposals also provides that, if a taxpayer validly makes the election in respect of all its foreign affiliates under the coming-into-force rules in this set of proposals in respect of subsection 95(2.2) that is referred to in the commentary to that section, the transitional version of subsection 95(2.21) also applies to taxation years, of all the taxpayer's foreign affiliates, that begin after 1994 and end before 2000. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue can make any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that is necessary to take that election into account.

Application of paragraph 95(2)(a.1)

ITA
95(2.3)(*b*)

Subsection 95(2.3) of the Act exempts a foreign affiliate from the application of paragraph 95(2)(*a.1*) with respect to the sale or exchange of property that is currency when the conditions in that subsection are met.

One condition, found in paragraph 95(2.3)(*b*), is that the sale or exchange of property that is currency is made in course of a business carried on by the affiliate principally with arm's length persons in the country in which the affiliate is formed or organized and exists and is governed and in the country in which the business is principally carried on.

Paragraph 95(2.3)(*b*) is modified to require the sale or exchange to be made by the foreign affiliate in the course of a business conducted principally with arm's length persons. As well, the following conditions must be met:

- the business must be principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or
- if the affiliate is a foreign bank, a trust company, a credit union, an insurance corporation, or a trader or dealer in securities or commodities and the activities of the business are regulated
  - under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by proposed new Section 8202 of the Regulations) in that country,
  - under the laws of the country (other than Canada) in which the business is principally carried on, or
  - if the affiliate is related to a corporation, under the laws of the country under the laws of which that related corporation is governed and any of exists, was (unless the related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Amended paragraph 95(2.3)(*b*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Application of paragraph 95(2)(a.3)

ITA
95(2.4)

In general terms, paragraph 95(2)(*a.3*) of the Act deems income of a foreign affiliate of a taxpayer from Canadian source indebtedness, or from Canadian source lease obligations, to be income from a business other than an active business. Therefore, this income will be included in computing the affiliate's foreign accrual property income (FAPI).

Subsection 95(2.4) provides that paragraph 95(2)(*a.3*) will not apply in respect of income derived by a foreign affiliate of a taxpayer directly or indirectly from indebtedness to the extent that

- the income was derived by the affiliate in the course of a business that was conducted principally with persons with whom the affiliate deals at arm's length, and that was carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated in the jurisdiction in which it was formed or continued and exists and is governed, and in which the business was principally carried (paragraph 95(2.4)(*a*)), and
- the income was derived from the trading or dealing in such indebtedness with arm's length persons resident in a country other than Canada in which the affiliate and its similarly regulated competitors compete and have a substantial market presence (paragraph 95(2.4)(*b*)).

Paragraph 95(2.4)(*a*) is amended to refer to income derived by the affiliate in the course of a business that was conducted principally with persons with whom the affiliate deals at arm's length, and that was carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation, or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

- of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment (as defined by proposed new section 8202 of the Regulations) in that country,
- of the country in which the business is principally carried on, or
- if the affiliate is related to a corporation, of the country under the laws of which that related corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

Amended paragraph 95(2.4)(*a*) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Application of paragraph 95(2)(*a.3*)

ITA
95(2.41)

In general terms, paragraph 95(2)(*a.3*) of the Act deems income of a foreign affiliate of a taxpayer from Canadian source indebtedness, or from Canadian source lease obligations, to be income from a business other than an active business. This income will therefore be included in computing the affiliate's foreign accrual property income (FAPI). In general terms, new subsection 95(2.41) provides that paragraph 95(2)(*a.3*) will not apply to income of a foreign affiliate of a taxpayer from Canadian source indebtedness held by that affiliate where that indebtedness is used or held

- to fund a liability or reserve of the foreign life insurance business of the affiliate, or
- as capital that can reasonably be considered to have been required for the foreign life insurance business of the affiliate.

More specifically, new subsection 95(2.41) provides that, where four conditions are met, paragraph 95(2)(*a.3*) does not apply to a foreign affiliate of a taxpayer resident in Canada in respect of the affiliate's income for a taxation year derived, directly or indirectly, from indebtedness of persons resident in Canada or from indebtedness in respect of businesses carried on in Canada (referred to as the "Canadian indebtedness").

The first condition, set out in paragraph 95(2.41)(*a*), is that the taxpayer be at the end of the affiliate's taxation year

- a life insurance corporation resident in Canada, the business activities of which are subject by law to the supervision of the Superintendent of Financial Institutions or a similar authority of a province, or
- a corporation resident in Canada that is a subsidiary controlled corporation of such a life insurance corporation.

The second condition, set out in paragraph 95(2.41)(*b*), is that the Canadian indebtedness be used or held by the affiliate, throughout the period (in the taxation year) that it was used or held by the affiliate, in the course of carrying on a business (the "foreign life insurance business") that is a life insurance business carried on outside Canada (other than a business deemed by paragraph 95(2)(*a.2*) to be a "separate business other than an active business"), the activities of which are regulated

- under the laws of the country under the laws of which the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and
- under the laws of the country, if any, in which the business is principally carried on.

The third condition, set out in paragraph 95(2.41)(*c*), is that more than 90 per cent of the gross premium revenue of the affiliate for the taxation year in respect of the foreign life insurance business be derived from the insurance or reinsurance of risks (net of reinsurance ceded) in respect of persons

- that were non-resident at the time that the policies in respect of those risks were issued or effected, and
- that were at that time dealing at arm's length with the affiliate, the taxpayer and all persons that were related at that time to the affiliate or the taxpayer.

The fourth condition, set out in paragraph 95(2.41)(*d*), is that it be reasonable to conclude that the affiliate used or held the Canadian indebtedness

- to fund a liability or reserve of the foreign life insurance business, or
- as capital that can reasonably be considered to have been required for the foreign life insurance business.

In general terms, new subsection 95(2.41) ensures that a life insurer can hold Canadian source indebtedness in its foreign life insurance business without causing the income from that indebtedness to be treated as FAPI of the foreign affiliate.

New subsection 95(2.41) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999. New subsection 95(2.41) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

Application of paragraph 95(2)(*a.3*)

ITA
95(2.42)

New subsection 95(2.42) of the Act provides that if, at any time in the taxation year of the foreign affiliate of the taxpayer referred to in paragraph 95(2)(*a.3*), a life insurance corporation resident in Canada is the taxpayer referred to in that paragraph or is a person who controls, or is controlled by, such a taxpayer, a particular indebtedness or a particular lease obligation of the life insurance corporation is, for the purposes of that paragraph, deemed, at that time, not to be an indebtedness or a lease obligation of a person resident in Canada to the foreign affiliate, to the extent of the portion of the particular indebtedness or lease obligation that can reasonably be considered to have been issued by the life insurance corporation resident in Canada

- in respect of the life insurance corporation's life insurance business carried on outside Canada, and
- not in respect of
  - the life insurance corporation's life insurance business carried on in Canada, or
  - any other use.

Subsection 95(2.42) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999. New subsection 95(2.42) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

Definitions for paragraph 95(2)(*a.3*)

ITA
95(2.5)

Subsection 95(2.5) of the Act sets out definitions that apply for the purpose of paragraph 95(2)(*a.3*).

Definition "indebtedness"

The definition "indebtedness" in subsection 95(2.5) of the Act provides an exception for a foreign affiliate of a certain Canadian taxpayers from the rules in subsection 95(2)(*a.3*) for indebtedness arising under agreements providing for the purchase, sale or exchange of currency if the conditions set out that definition are met.

One condition, found in paragraph (*c*) of the definition, is that agreements providing for the purchase, sale or exchange of currency must be entered into in the course of a business carried on by the foreign affiliate principally with arm's length persons in the country under whose laws the affiliate is formed or organized and exists and is governed and in the country in which the business is principally carried on.

Paragraph (*c*) is modified to require that the agreements providing for the purchase, sale or exchange of currency must be entered into in the course of a business conducted principally with arm's length persons. As well, one of the following two alternative conditions must be met:

1. the business must be principally carried on in the country (other than Canada) under whose laws the foreign affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or
2. the foreign affiliate must be a foreign affiliate of the person described in paragraph 95(2.3)(*a*) or of a person related to such a person, and the foreign affiliate must be a foreign bank, a trust company, a credit union, an insurance corporation, or a trader or dealer in securities or commodities, and the activities of the business must be regulated
   - under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by proposed new Section 8202 of the Regulations) in that country,

- under the laws of the country in which the business is principally carried on, or
- under the laws of the country under whose laws a corporation related to the non-resident corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union.

The amendments apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

Rule for the definition "relevant non-arm's length entity"

ITA
95(2.6)

New subsection 95(1) of the Act provides rules for the purpose of the new definition "relevant non-arm's length entity" in subsection 95(1), in determining whether, at a particular time, an entity was not – at a time (the "prior time") before the particular time and at which the entity did not exist – dealing at arm's length with another entity. Those rules are contained in paragraphs (*a*) to (*d*) of that definition.

Paragraph (*a*) provides that, where a corporation that exists at the particular time did not exist at the prior time,

- the corporation is deemed to exist at the prior time,
- the shares of the capital stock of the corporation that are issued and outstanding at the particular time are deemed to exist at the prior time,
- the owners of the shares of the capital stock of the corporation at the particular time are deemed to own, at the prior time, the shares of the capital stock of the corporation that they own at the particular time, and
- where the corporation is related to another entity at the particular time, the corporation is deemed to be related to that other entity at the prior time;

Paragraph (*b*) provides that, where a partnership that exists at the particular time did not exist at the prior time,

- the partnership is deemed to exist at the prior time,
- the partnership interests in the partnership that exist at the particular time are deemed to exist at the prior time, and
- the owners of the partnership interests in the partnership at the particular time are deemed to own, at the prior time, the partnership interests in the partnership that they own at the particular time.

Paragraph (*c*) provides that, where a trust that exists at the particular time did not exist at the prior time,

- the trust is deemed to exist at the prior time,
- the beneficiaries and their beneficial interests in the trust that exist at the particular time are deemed to exist at the prior time, and
- where the trust is related to another entity at the particular time, the trust is deemed to be related to that other entity at the prior time.

Paragraph (*d*) provides that, where a natural person who exists at the particular time did not exist at the prior time,

- the natural person is deemed to exist at the prior time, and
- where the natural person is related to another entity at the particular time, the natural person is deemed to be related to that other entity at the prior time.

New subsection 95(2.6) applies in respect of taxation years, of a foreign affiliate of a taxpayer, that begin after 1994.

Definition of "services"

ITA
95(3)(*c*) and (*d*)

Paragraph 95(2)(*b*) of the Act provides that service income of a controlled foreign affiliate of a taxpayer will, under certain circumstances, be treated as income from a business other than an active business.

Subsection 95(3) provides that, for the purpose of paragraph 95(2)(*b*), "services" includes the insurance of Canadian risks but does not include

- the transportation of persons or goods (paragraph 95(3)(*a*)), or
- services performed in connection with the purchase or sale of goods (paragraph 95(3)(*b*)).

New paragraph 95(3)(*c*) ensures that, for the purpose of paragraph 95(2)(*b*), the transmission of electronic signals or electricity along a transmission system located outside Canada does not constitute "services".

New paragraph 95(3)(*d*) accommodates certain types of contract manufacturing services provided by a foreign affiliate of a taxpayer. That paragraph ensures that, for the purpose of paragraph 95(2)(*b*), manufacturing or processing does not constitute "services" where it consists of manufacturing or processing outside Canada, in accordance with the taxpayer's specifications and under a contract between the taxpayer and the affiliate, of tangible property, or for civil law corporeal property, that is owned by the taxpayer if the property resulting from the manufacturing or processing is used or held by the taxpayer in the ordinary course of the taxpayer's business carried on in Canada.

New paragraphs 95(3)(*c*) and (*d*) apply to the 2001 and subsequent taxation years of a foreign affiliate of a taxpayer. However, if the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the amending legislation enacting this set of proposals receives Royal Assent, new paragraphs 95(3)(*c*) and (*d*) apply to the taxation years, of all foreign affiliates of the taxpayer, that begin after 1994. This set of proposals provides that, notwithstanding subsections 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take that election into account.

Note, also, that new paragraph 95(3)(*d*) is included in the Global Section 95 Election package described at the beginning of the commentary to section 95.

Designated property - subparagraph 95(2)(*a.1*)(i)

ITA
95(3.1)

New subsection 95(3.1) of the Act provides a definition of the expression "designated property" for the purpose of amended subparagraph 95(2)(*a.1*)(i). For detail about new subsection 95(3.1) and its coming-into-force, please refer to the commentary to subparagraph 95(2)(*a.1*)(i).

Clause 17

Beneficiaries' taxable capital gain

ITA
104(21.2)

Subsection 104(21.2) of the Act sets out the rules for establishing those net taxable capital gains of a personal trust that have been designated by a trust in respect of its beneficiaries that can be attributed to specific types of properties disposed of by the trust for the purpose of section 110.6 of the Act. This attribution permits the beneficiary to claim the lifetime capital gains exemption under section 110.6 for dispositions by a personal trust of qualified farm property, qualified fishing property or a share of a qualified small business corporation (collectively referred to as "qualified property") of the trust.

New subsections 104(21.21) to (21.24) are being added consequential to the increase in the lifetime capital gains exemption limit from $500,000 to $750,000 of capital gains in respect of property disposed of on or after March 19, 2007. In determining an individual's entitlement to the increased exemption limit, the individual must establish the extent to which the individual's taxable capital gains arose from dispositions of qualified property on or after March 19, 2007. New subsections 104(21.21) to (21.24) assist individuals in respect of whom personal trusts have designated amounts in respect of net taxable capital gains of the trust from dispositions of qualified property of the trust.

New subsection 104(21.21) provides that, where clause 104(21.2)(*b*)(ii)(A) applies to deem for the purpose of section 110.6 a beneficiary to have a taxable capital gain (the "QFP taxable capital gain ") from a disposition of capital property that is qualified farm property of the beneficiary, for the beneficiary's taxation year in which the designation year of the trust ends, the beneficiary is, where the trust complies with requirements of new subsection 104(21.24), deemed for the purpose of new subsection 110.6(2.3) to have a taxable capital gain from the disposition of qualified farm property on or after March 19, 2007 equal to that proportion of the QFP taxable capital gains for the beneficiary's taxation year in which the designation year of the trust ends that the beneficiary's net post- March 18, 2007 QFP taxable capital gains for the year is of the beneficiary's net QFP taxable capital gains for the year.

New subsection 104(21.22) of the Act provides that, where clause (21.2)(*b*)(ii)(B) applies to deem for the purpose of section 110.6 a beneficiary to have a taxable capital gain (the "QSBC taxable capital gain") from a disposition of capital property that is a qualified small business corporation share of the beneficiary, for the beneficiary's taxation year in which the designation year of the trust ends, the beneficiary, where the trust complies with requirements of new subsection 104(21.24), is deemed for the purpose of new subsection 110.6(2.3) to have a taxable capital gain from the disposition of a qualified small business corporation share on or after March 19, 2007 equal to that proportion of the QSBC taxable capital gain for the beneficiary's taxation year in which the designation year of the trust ends that the beneficiary's net post- March 18, 2007 QSBC taxable capital gains for the year is of the beneficiary's net QSBC taxable capital gains for the year.

New subsection 104(21.23) provides that, where clause 104(21.2)(*b*)(ii)(C) applies to deem for the purpose of section 110.6 a beneficiary to have a taxable capital gain (the "QFFP taxable capital gain") from a disposition of capital property that is qualified fishing property of the beneficiary, for the beneficiary's taxation year in which the designation year of the trust ends, the beneficiary, where the trust complies with requirements of new subsection 104(21.24), is deemed for the purpose of new subsection 110.6(2.3) to have a taxable capital gain from the disposition of qualified fishing property on or after March 19, 2007 equal to that proportion of the QFFP taxable capital gains for the beneficiary's taxation year in which the designation year of the trust ends that the beneficiary's net post- March 18, 2007 QFFP taxable capital gains for the year is of the beneficiary's net QFFP taxable capital gains for the year.

New subsection 104(21.24) provides that a trust is to determine and to designate, in its return of income under this part for a designation year of the trust, the following amounts in respect of a beneficiary

- the amount that is, under subsection 104(21.21), determined to be the beneficiary's taxable capital gain from the disposition of qualified farm property of the beneficiary,
- the amount that is, under subsection 104(21.22), determined to be the beneficiary's taxable capital gain from the disposition of qualified small business corporation shares of the beneficiary, and
- the amount that is, under subsection 104(21.23), determined to be the beneficiary's taxable capital gain from the disposition of qualified fishing property of the beneficiary.

New subsections 104(21.21) to (21.24) apply to trust taxation years that end on or after March 19, 2007.

Clause 18

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
108(2)

This amendment is consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 55 for more information.

Clause 19

Charitable donation of employee option securities

ITA
110(1)(*d.01*)

When an employee acquires a publicly-listed security under an option granted by the employer and donates the security to a qualified donee (other than a private foundation) within 30 days, the employee may be eligible for a special deduction, the general effect of which is to exempt the associated employment benefit from tax. Paragraph 110(1)(*d.01*) of the Act is amended to extend this provision to donations to private foundations made on or after March 19, 2007.

Excluded from this beneficial treatment are donations to a non-qualifying private foundation – in general terms, one that has not complied with certain time-specific limits on its corporate holdings. For additional details regarding the excess corporate holdings rules for private foundations, refer to the commentary for the definitions "excess corporate holdings percentage" and "non-qualifying private foundation" in section 149.1 of the Act.

Clause 20

Gifts of medicine

ITA
110.1(1)(*e*)

Gifts by corporations of property held in inventory, to registered Canadian charities and other qualified donees, are eligible for a charitable donations deduction equal to the "eligible amount" in respect of the gift (which will, generally, equal the fair market value of the property gifted, subject to the application of subsection 248(31) of the Act). Paragraph 110.1(1)(*e*) of the Act is added to allow corporations that make donations of medicines from their inventory to claim a special additional deduction for "eligible medical gifts" (as provided in new subsection 110.1(8)), generally equal to the lesser of the cost of the donated medicine and 50 per cent of the amount, if any, by which the fair market value of the donated medicine exceeds that cost.

This measure applies to gifts made on or after March 19, 2007.

Eligible medical gift

ITA
110.1(8)

New subsection 110.1(8) of the Act defines an "eligible medical gift" of a corporation for the purposes of new paragraph 110.1(1)(*e*). An eligible medical gift is generally a gift of medicine that is donated for charitable activities outside Canada and is made out of the inventory of a corporation. The gift must be made to a registered charity that has received a disbursement under an international development assistance program of the Canadian International Development Agency. New subsection 110.1(8) applies to gifts made on or after March 19, 2007. After Announcement Date, in order for gifts of medicine to qualify as an "eligible medical gift", the medicine must also be a drug that generally meets the requirements of the *Food and Drugs Act*, and cannot be a food, a cosmetic or a medical device, a natural health product, or a veterinary drug.

Clause 21

Capital gains deduction

ITA
110.6(2)(*a*)

An individual (other than a trust) is entitled to deduct, in computing taxable income, an amount determined under subsection 110.6(2)(*a*) of the Act in respect of taxable capital gains from the disposition of qualified farm property. The lifetime exemption limit is being increased from $250,000 to $375,000 of taxable capital gains derived from qualified properties. The increase to the lifetime exemption limit will apply to dispositions of qualified properties that occur on or after March 19, 2007.

Additional capital gains deduction — taxation year that includes March 19, 2007

ITA
110.6(2.3)

The increase in the lifetime capital gains exemption limit from $250,000 to $375,000 of capital gains will only apply to taxable capital gains from dispositions of qualified property that occur on or after March 19, 2007. A transition rule is provided in new subsection 110.6(2.3) of the Act for the taxation year of an individual that includes March 19, 2007.

New subsection 110.6(2.3) provides that, in computing the taxable income of an individual (other than a trust) for the individual's taxation year that includes March 19, 2007 (the "transition year"), there may be deducted, where that individual was resident in Canada throughout that taxation year and that individual disposed of it in that year, and on or after March 19, 2007, a qualified small business corporation share of the individual, a qualified farm property of the individual, or a qualified fishing property of the individual (collectively referred to as "qualified property"), such amount as the individual may claim not exceeding the least of

- $125,000,
- the amount by which the individual's cumulative gains limit at the end of the transition year exceeds the amount deducted by the individual under the lifetime capital gains exemption (determined without reference to the increased exemption limit) in computing the individual's taxable income for the transition year,
- the amount, if any, by which the individual's annual gains limit for the transition year exceeds the amount deducted by the individual under the lifetime capital gains exemption (determined without reference to the increased exemption limit) in computing the individual's taxable income for the transition year, and
- the individual's net taxable capital gains in respect of qualified property disposed of by the individual on or after March 19, 2007.

New subsection 110.6(2.3) applies to taxation years that end on or after March 19, 2007.

Deemed resident in Canada

ITA
110.6(5)

Subsection 110.6(5) of the Act provides that, where an individual is resident in Canada at any time in a particular taxation year, the individual is deemed to be resident in Canada throughout that particular year if the individual was resident in Canada throughout either the immediately preceding taxation year or the immediately following taxation year. Subsection 110.6(5) is applicable only for the purpose of subsections 110.6(2), (2.1), and (2.2). The amendment to subsection 110.6(5) adds a reference to new subsection 110.6(2.3) thereby ensuring that it also applies for the purpose of that new subsection.

This amendment applies to taxation years that end on or after March 19, 2007.

Failure to report capital gain

ITA
110.6(6)

Subsection 110.6(6) of the Act denies a capital gains exemption for certain unreported net taxable capital gains notwithstanding the amount that could be claimed as a capital gains exemption under subsections 110.6(2), (2.1) and (2.2). This subsection applies where an individual has realized a capital gain on a disposition of capital property in a taxation year and knowingly or under circumstances amounting to gross negligence fails to report the disposition in his or her return of income for that taxation year or fails to file a return for that taxation year within one year following the taxpayer's filing-due date for the taxation year.

Subsection 110.6(6) is amended to add a reference to proposed new subsection 110.6(2.3).

This amendment generally applies to taxation years that end on or after March 19, 2007.

Deduction not permitted

ITA
110.6(7)

Subsection 110.6(7) of the Act is an anti-avoidance rule that prevents, notwithstanding the existence of subsections 110.6(2), (2.1) and (2.2), the conversion of corporate capital gains that are taxable into exempt capital gains of an individual.

Subsection 110.6(7) is amended, effective for taxation years that end after March 19, 2007, to provide that it also applies for the purpose of new subsection 110.6(2.3).

Paragraph 110.6(7)(*a*) is also amended, effective for taxation years that end after May 1, 2006, to clarify that no amount may be claimed under subsection 110.6 in respect of a capital gain arising on a disposition of property if the disposition is part of a series of transactions or events that include a dividend received by a corporation to which dividend subsection 55(2) does not apply but would apply if the Act were read without reference to the exception in paragraph 55(3)(*b*). Paragraph 55(3)(*b*) provides an exemption from the anti-avoidance rule in subsection 55(2) of the Act in respect of certain dividends received in the course of what is often referred to as a "butterfly transaction".

Deduction not permitted

ITA
110.6(8)

Subsection 110.6(8) of the Act provides that, notwithstanding the existence of subsections 110.6(2), (2.1) and (2.2), an individual may not claim the capital gains exemption with respect to a capital gain realized on a disposition of property if it is reasonable to conclude that a significant portion of the capital gain is attributable to the fact that dividend payments on a share (other than a prescribed share) have either not been made or have been deferred.

Subsection 110.6(8) is amended to add a reference to new subsection 110.6(2.3).

This amendment applies to taxation years that end on or after March 19, 2007.

Deductions denied

ITA
110.6(31) and (32)

New subsections 110.6(31) and (32) of the Act will, notwithstanding subsections 110.6(2.1) to (2.3), prevent an individual from claiming a capital gains exemption in a taxation year commencing after March 19, 2007 in respect of a taxable capital gain from a disposition, before March 20, 2007, of property in certain circumstances.

Subsection 110.6(31) provides that the denial will apply in respect of an individual's taxable capital gains for a taxation year that begins after March 19, 2007 if

- in the taxation year the individual has a taxable capital gain from the disposition, before March 20, 2007, of a qualified small business corporation share of the individual, a qualified farm property of the individual or a qualified fishing property of the individual; and
- those taxable capital gains exceed the amount that would be deductible by the individual under the lifetime capital gains exemption as it existed before March 19, 2007.

Subsection 110.6(32) provides that, notwithstanding subsections (2) to (2.3), no amount may be deducted under section 110.6 for the taxation year by the individual in respect of the individual's taxable capital gains for the year to the extent of the excess described in subsection 110.6(31).

New subsections 110.6(31) and (32) apply to taxation years that end on or after March 19, 2007.

Clause 22

Non-resident persons – 2010 Olympic and Paralympic Winter Games

ITA
115(2.3)

Section 115 of the Act determines a non-resident person's taxable income earned in Canada. Generally, this is the amount of the non-resident person's income that is subjected to tax in Canada under Part I of the Act.

Subsection 115(2.3) is added to provide an exemption from tax under Part I with respect to certain amounts that are paid or payable to certain persons and that would otherwise be subject to tax under subsection 115(1). The exemption applies to amounts that non-resident athletes and others earn after 2009 and before April 2010 in respect of the 2010 Olympic Winter Games or the 2010 Paralympic Winter Games.

With respect to the consequential amendment to a payor's withholding obligation under Part I of the Act, please refer to the commentary to subsection 153(1) of the Act.

Clause 23

Replacement of "prescribed stock exchange" by "recognized stock exchange" – exclusion of certain shares from clearance certificate process

ITA
116(6)(*b*)

Section 116 of the Act provides procedures for collecting tax when non-residents dispose of certain properties. Paragraph 116(6)(*b*) excludes from these requirements shares listed on a prescribed stock exchange. The reference in this paragraph to "prescribed stock exchange" is replaced with a reference to the new category of "recognized stock exchange", which is a newly defined term under subsection 248(1) of the Act. This amendment applies on and after the day on which this Act is assented to. The notes to subsection 248(1) and new section 262 of the Act provide further information.

Clause 24

Tax payable - WITB advance payment

ITA
117(2.1)

Section 117 of the Act deals with the computation of tax payable under Part I of the Act by an individual. This section is amended, applicable to the 2008 and subsequent taxation years, by adding new subsection 117(2.1). This new subsection provides that an advance payment received by an individual in respect of a taxation year under new subsection 122.7(7) of the Act is to be included in the individual's tax payable under Part I of the Act for that taxation year. Under new subsection 122.7(7), the Minister of National Revenue may, beginning in 2008, make an advance payment to an individual of up to one-half of the individual's estimated Working Income Tax Benefit (WITB) for a taxation year.

New subsection 117(2.1) has important implications for recipients of advance payments. First, a recipient of an advance payment will be required to file an income tax return for the taxation year to which the payment relates. Secondly, the provisions of the Act which govern the application of interest to amounts owing on account of tax payable will apply to advance payments.

New subsection 117(2.1) provides that an advance payment is not considered to be tax payable under Part I of the Act for the purpose of sections 118 to 118.9, 121 and 122.3 and Subdivision c of Division E of the Act. In addition, an advance payment is not considered to be tax payable under Part I for the purpose of the minimum tax carryover in section 120.2 of the Act.

Clause 25

Annual adjustment

ITA
117.1(1)

Subsection 117.1(1) of the Act provides for the indexing of various amounts, including the amounts on which the personal tax credits are based. The indexing is based on annual increases in the Consumer Price Index (CPI). Subsection 117.1(1) is amended, for the 2008 and subsequent taxation years, to provide for the indexing of certain amounts that are relevant to the computation of the WITB in new subsections 122.7(2) and (3) of the Act.

Clause 26

Personal credits
ITA
118

Section 118 of the Act provides for the calculation of various personal tax credits. These credits are calculated by multiplying the base amount in respect of the particular credit by the lowest personal tax rate (15.5 per cent for the 2007 and subsequent taxation years).

ITA
118(5.1)

Presently, subsection 118(5) precludes a person from claiming a credit in respect of a child under paragraph (*b*) or (*b.1*) of the description of B in subsection 118(1) if that person also pays child support in respect of the child. Where, in the same taxation year, two persons pay child support in respect of a child, neither person is eligible for the credit.

New subsection 118(5.1) corrects this unintended result by providing that, in such a case, the Act is to be read without reference to subsection 118(5). This ensures that one of the persons may claim the credit.

New subsection 118(5.1) applies to the 2007 and subsequent taxation years.

Clause 27

Transit pass tax credit

ITA
118.02

Section 118.02 of the Act provides to an individual a non-refundable tax credit in respect of the cost of eligible public transit passes attributable to the use, by the individual or a qualifying relation in respect of the individual, of public transit in a taxation year. The credit is calculated by reference to that cost multiplied by the appropriate percentage for that taxation year. The appropriate percentage is 15.5 per cent for the 2007 and subsequent taxation years.

ITA
118.02(1)

Subsection 118.02(1) of the Act sets out certain definitions and rules that apply for the purpose of the transit pass tax credit.

"eligible public transit pass"

"Eligible public transit pass" is a document issued by or on behalf of a qualified Canadian transit organization that identifies the right of an individual (the holder or owner of the document) to use public commuter transit services provided by that organization on an unlimited number of occasions and on any day during which the services are offered during an uninterrupted period of at least 28 days.

This definition is amended, as a result of the 2007 Budget, to provide that an eligible public transit pass will also include a pass that offers an unlimited use of public commuter transit services during an uninterrupted period of at least 5 consecutive days, if the combination of that pass and one or more other such passes gives the right to the individual to use the public commuter transit services on at least 20 days in a 28-day period.

"eligible electronic payment card"

The new definition "eligible electronic payment card" means an electronic payment card that is

- used by an individual for at least 32 one-way trips, between the place of origin of the trip and its termination, during an uninterrupted period not exceeding 31 days, and
- issued by or on behalf of a qualified Canadian transit organization, which organization records and receipts the cost and usage of the electronic payment card and identifies the right, of the individual who is the holder or owner of such a card, to use public commuter transit services of that qualified Canadian transit organization.

These amendments apply to the 2007 and subsequent taxation years.

Transit pass tax credit

ITA
118.02(2)

Subsection 118.02(2) of the Act provides for the calculation of the non-refundable transit pass tax credit for a taxation year. The credit is determined by applying the appropriate percentage for the taxation year to the amount by which the cost of an individual's eligible public transit passes exceeds any reimbursements and other forms of assistance in respect of the cost of the passes (other than an amount that is included in computing that individual's income and that is not deductible in computing that individual's taxable income).

In the calculation of the transit pass tax credit, the description of C in the formula in subsection 118.02(2) is amended consequential to the introduction of the new definition "eligible electronic payment card".

This amendment applies to the 2007 and subsequent taxation years.

Apportionment of credit

ITA
118.02(3)

Subsection 118.02(3) of the Act provides that, where more than one individual is entitled to the transit pass tax credit in respect of an eligible public transit pass, the total amounts claimed by those individuals cannot exceed the maximum amount that would be allowed if only one individual were claiming the transit pass tax credit. If the individuals cannot agree as to what portion of the amount each may claim, the Minister of National Revenue may fix the portions.

This subsection is amended consequential to the introduction of the new definition "eligible electronic payment card".

This amendment applies to the 2007 and subsequent taxation years.

Clause 28

Child fitness tax credit

ITA
118.03

Section 118.03 of the Act provides to an individual a non-refundable tax credit for up to $500 of eligible fitness expenses paid in a taxation year in respect of each qualifying child of the individual. The credit is calculated by reference to the total of such costs multiplied by the appropriate percentage for that taxation year. The appropriate percentage is 15.5 per cent for the 2007 and subsequent taxation years.

Definitions

ITA
118.03(1)

Subsection 118.03(1) of the Act sets out certain definitions and rules that apply for the purpose of the child fitness tax credit.

"eligible fitness expense"

"Eligible fitness expense" is a fee paid to a qualifying entity as a cost of registration or membership of a qualifying child in a program of prescribed physical activity. This cost includes the cost to the qualifying entity of the program in respect of its

- administration,
- instruction,
- rental of required facilities, and
- uniforms and equipment that are not available to be acquired by a participant in the program for an amount less than its fair market value at the time it is acquired.

This definition is amended to refer to a "prescribed program of physical activity" instead of a "program of prescribed physical activity". This change is made to reflect the terminology used in the Report of the Expert Panel for the Children's Fitness Tax Credit.

"qualifying child"

"Qualifying child" of an individual for a taxation year is a child of the individual who has not, before the taxation year, attained the age of 16 years.

This definition is amended to provide that a qualifying child of an individual for a taxation year also includes a child of the individual who has not, before the taxation year, attained the age of 18 years, if the child is eligible for the disability tax credit under section 118.3 of the Act.

"qualifying entity"

"Qualifying entity" is a person or partnership that offers one or more programs of prescribed physical activity.

This definition is amended to refer to one or more "prescribed programs of physical activity" instead of a "program of prescribed physical activity". This change is made to reflect the terminology used in the Report of the Expert Panel for the Children's Fitness Tax Credit.

These amendments apply to the 2007 and subsequent taxation years.

Child fitness tax credit – child with disability

ITA
118.03(2.1)

New subsection 118.03(2.1) of the Act provides to an individual an additional non-refundable tax credit of $77.50 ($500 x 15.5 per cent) for a taxation year in respect of each qualifying child of the individual that is eligible for the disability tax credit. The additional credit is available where $100 or more of eligible fitness expenses are claimed under the general child fitness tax credit in subsection 118.03(2).

Example:

Marie-Soleil turns 18 years of age in 2007 and is eligible for the disability tax credit under section 118.3 of the Act for the 2007 taxation year. Her parents spent $115 in eligible expenses for swimming lessons in 2007. Marie-Soleil's parents may claim a child fitness tax credit of $95.33 ($615 x 15.5%):

- *$115 under the general child fitness tax credit; and*
- *$500 under the special rule for children with a disability.*

In the above example, assume Marie-Soleil's parents spent $85 for swimming lessons, Marie-Soleil's parents may claim a child fitness tax credit of $13.18 ($85 x 15.5%):

- *$85 under the general child fitness tax credit; and*
- *$0 under the special rule for children eligible for the disability tax credit because Marie-Soleil's parents did not spend a minimum of $100 in eligible fitness expenses.*

New subsection 118.03(2.1) applies to the 2007 and subsequent taxation years.

Clause 29

Exchange of beneficial interest in trust

ITA
118.1(14.1)

Subsection 118.1(13) of the Act defers the charitable donations tax credit available to an individual in respect of the gift of a non-qualifying security of the individual. Paragraph 118.1(13)(*c*) applies where the donee disposes of the security, generally to allow the tax credit to the individual at that time. The fair market value of the gift, for the purpose of determining the credit, cannot exceed the amount by which the value of the consideration received by the donee on the disposition exceeds the value of any part of that consideration that is other non-qualifying securities of the individual.

New subsection 118.1(14.1) provides that if, in the course of a disposition of a beneficial interest in a trust that is a non-qualifying security of an individual, the donee receives as consideration only other non-qualifying securities of the individual, the gift referred to in subsection 118.1(13) is considered to be a gift of those other non-qualifying securities, rather than a gift of the interest in the trust. For example, if an individual donates an interest in a trust, that interest may be a non-qualifying security of the individual under subsection 118.1(18) because the trust holds other non-qualifying securities of the individual. If the trust is wound up and those other non-qualifying securities are distributed from the trust to the donee, the individual will not be permitted a charitable donations tax credit (originally denied when the gift was made of the interest in the trust) until those other non-qualifying securities are disposed of by the donee.

Subsection 118.1(14.1) applies in respect of gifts made on or after March 19, 2007. For details on the definition "non-qualifying security", refer to the commentary for subsection 118.1(18).

Loanbacks

ITA
118.1(16)

Subsection 118.1(16) of the Act applies in certain circumstances to reduce the fair market value of a gift for the purpose of calculating an individual's charitable donations tax credit. If the gifted property is a non-qualifying security, the rule applies only if the gift is an "excepted gift" under subsection 118.1(19) of the Act (i.e., generally if the property is a share gifted to a public charity that is arm's length with the donor). Otherwise, the provision applies in two circumstances:

1. where a donee holds a non-qualifying security of an individual within five years after the individual makes a gift to the donee, and the individual acquired the security no earlier than five years before the gift was made; or
2. where an individual makes a gift to a non-arm's length donee and, pursuant to an agreement made no earlier than five years before the making of the gift, the individual or a non-arm's length person uses property of the donee within five years.

However, there are two exceptions to the application of the rule in the second circumstance:

1. if the individual deals at arm's length with the donee; or
2. if the use of the donee's property by the individual is in the course of the donee's charitable activities.

Subsection 118.1(16) is amended such that the first exception no longer applies, in respect of gifts made on or after March 19, 2007.

Non-qualifying security defined

ITA
118.1(18)

The non-qualifying security rules were introduced in 1997 to defer the opportunity for certain donors (generally individuals who do not deal at arm's length with their corporations) to receive a tax benefit by making gifts to a qualified donee of securities in those corporations. The benefit is generally deferred until the donee disposes of the security. (The rules extend to situations where, after a donation, the donee holds a debt obligation of the donor.)

The definition "non-qualifying security" in subsection 118.1(18) of the Act is amended to provide that it applies if the donor of securities (e.g. of a corporation) is a trust and a person affiliated with the trust does not deal at arm's length with the corporation.

The definition is also extended to include a beneficial interest in a trust that is affiliated with an individual or the individual's estate, if the trust holds a non-qualifying security of the individual or estate (or held a share that is such a non-qualifying security, and that has been disposed of by the trust to the charity).

Subsection 118.1(18) is also amended to replace the words "prescribed stock exchange" with "designated stock exchange". For details, refer to the commentary for new section 262 of the Act.

These amendments apply in respect of gifts made on or after March 19, 2007, except that the reference to a designated stock exchange applies on Royal Assent.

Clause 30

Definitions

ITA
120(4)

Section 120 of the Act provides, among other things, for the payment by an individual of an additional tax in respect of the portion of the individual's income that is not earned in a province, and allows a tax reduction (Quebec abatement) to an individual in respect of income earned in the Province of Quebec. Both the additional tax and the Quebec abatement are calculated by reference to the tax otherwise payable under Part I of the Act, as defined in subsection 120(4).

Under new subsection 122.7(7) of the Act, the Minister of National Revenue may, beginning in 2008, make an advance payment to an individual of up to one-half of the individual's estimated WITB for a taxation year. The amount of the advance payment is added to the recipient's tax payable under Part I for the year under new subsection 117(2.1) of the Act. The definition, "tax otherwise payable under this Part" is amended, applicable to the 2008 and subsequent taxation years, to exclude amounts that are included in an individual's tax payable for the year under new subsection 117(2.1). This amendment is intended to ensure that an advance payment described in new subsection 122.7(7) (and included in tax payable under Part I of the Act) is not included in computing tax otherwise payable for the purposes of the additional tax on income not earned in a province and the Quebec abatement.

Clause 31

SIFT trusts – definitions – REIT

ITA
122.1(1)

Subsection 122.1(1) of the Act sets out a number of definitions for the purposes of the rules that apply to "SIFT trusts" and, in some cases, "SIFT partnerships" (both of which terms are defined in subsection 248(1) of the Act). Among these is the definition "real estate investment trust". One of the requirements for a trust to be a real estate investment trust is that the fair market value of certain properties it holds must equal at least 75 per cent of the trust's "equity value" (as itself defined in subsection 122.1(1)). In addition to real or immovable property and cash, the properties in question include certain obligations of Canadian governments and quasi-governmental entities.

In its current form, subsection 122.1(1) refers to these obligations as properties described in clause 212(1)(*b*)(ii)(C) of the Act. Concurrent with anticipated changes to the tax treaty between Canada and the United States, paragraph 212(1)(*b*) of the Act is being substantially revised, and the reference in subsection 122.1(1) will no longer be valid. This amendment replaces that reference with a reference to properties described in paragraph (*a*) of the new definition "fully exempt interest" in subsection 212(3). For additional information, readers may consult the notes to that definition.

To coincide with the revision of paragraph 212(1)(*b*), this consequential amendment applies on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

Clause 32

Working Income Tax Benefit

ITA
122.7

New section 122.7 of the Act introduces the Working Income Tax Benefit (WITB). The WITB is a refundable tax credit, payable in respect of the 2007 and subsequent taxation years, to low-income individuals who have earnings from employment or business (referred to hereafter as "working income"). The purpose of the WITB is to make work more rewarding and attractive for Canadians already in the workforce and to encourage other Canadians to enter the workforce.

The WITB is made up of two parts: a basic amount (Basic WITB) and a supplement for individuals who are entitled to the disability tax credit (WITB Supplement). The Basic WITB provides a refundable tax credit equal to 20 per cent of each dollar of working income in excess of $3,000 to a maximum credit of $500 for single individuals without dependants (Single WITB) and $1,000 for couples and single parents (Family WITB). The WITB Supplement provides a refundable tax credit equal to 20 per cent of each dollar of working income in excess of $1,750 to a maximum credit of $250.

To target the WITB to low-income individuals and families, the Basic WITB and the WITB Supplement will be reduced if the individual's income (or, where applicable, the combined income of the individual and the individual's spouse or common-law partner) exceeds certain thresholds. For further information on the computation of the Basic WITB and the WITB Supplement, please refer to the commentary to new subsections 122.7(2) and (3).

The maximum credit for the Basic WITB and the WITB Supplement will be indexed annually after 2007 by reference to changes in the CPI.

Definitions

ITA
122.7(1)

New subsection 122.7(1) of the Act defines a number of terms for the purposes of the WITB.

"adjusted net income"

To ensure that the WITB is available only to low-income individuals, the WITB is gradually reduced for individuals whose "adjusted net income" (or, where applicable, the combined adjusted net income of the individual and his or her cohabiting spouse or common-law partner) exceeds certain thresholds. In this respect, the definition "adjusted net income" is a key component of the computation of the WITB.

An individual's adjusted net income for a taxation year is the individual's net income for the year adjusted to include amounts that would otherwise be excluded from income because of paragraph 81(1)(*a*) or subsection 81(4) of the Act and to exclude certain items, such as a benefit received (or repaid) under the *Universal Child Care Benefit Act*, an amount under a Registered Disability Savings Plan and a capital gain arising under section 79 of the Act.

"cohabiting spouse or common-law partner"

The definition "cohabiting spouse or common-law partner" is relevant in determining if an individual is an eligible spouse of another individual. An eligible individual who has an eligible spouse for a taxation year is entitled to the Family WITB. For information on the meaning of eligible spouse, please refer to the commentary to the definition "eligible spouse" in this subsection. For information on the Family WITB, please refer to the commentary to new subsection 122.7(2) of the Act.

An individual's cohabiting spouse or common-law partner means the individual's spouse or common-law partner who is not living separate and apart from the individual. For this purpose, spouses or common-law partners are not considered to be living separate and apart at any time unless they were living separate and apart, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time.

"designated educational institution"

The definition "designated educational institution" is relevant for the purpose of the definition "ineligible individual" in this subsection. An ineligible individual for a taxation year includes an individual (other than the parent of an eligible dependant) who was enrolled as a full-time student at a designated educational institution for more than 13 weeks in the year. A designated educational institution is defined to have the meaning assigned by subsection 118.6(1) of the Act.

For information on the meaning of eligible dependant and ineligible individual, please refer to the commentary to the definitions "eligible dependant" and "ineligible individual" in this subsection.

"eligible dependant"

The definition "eligible dependant" is relevant in determining if a single individual is eligible for the Family WITB. It is also relevant in determining the income threshold at which the WITB Supplement for a single individual is reduced.

An eligible dependant of an individual for a taxation year means a child of the individual who, at the end of the taxation year, was under 19 years of age and who resided with the individual. However, an eligible dependant does not include a person who would otherwise be entitled to claim the WITB on his or her own behalf (*i.e.*, a person who has a cohabiting spouse or common-law partner or is the parent of a child with whom the person resides).

For information on the Family WITB and the WITB Supplement, please refer to the commentary to new subsections 122.7(2) and 122.7(3) of the Act.

"eligible individual"

The definition "eligible individual" is relevant in determining if an individual may claim the WITB in a taxation year. An eligible individual for a taxation year is an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was, at the end of the taxation year, 19 years of age or older, the cohabiting spouse or common-law partner of another individual, or the parent of a child with whom the individual resides.

"eligible spouse"

The definition "eligible spouse" is relevant in determining if an eligible individual may claim the Family WITB. The Family WITB is available in a taxation year to an eligible individual who has either an eligible spouse or eligible dependant for the taxation year. An eligible spouse of an eligible individual for a taxation year means an individual (other than an ineligible individual) who was resident in Canada throughout the taxation year and who was the cohabiting spouse or common-law partner of the eligible individual at the end of the taxation year.

For information on the meaning of eligible individual and ineligible individual, please refer to the commentary to the definitions "eligible individual" and "ineligible individual" in this subsection. For information regarding the Family WITB, please refer to the commentary to new subsection 122.7(2) of the Act.

"ineligible individual"

The definition "ineligible individual" is relevant in determining if an individual is an eligible individual (*i.e.* eligible to claim the WITB) or an eligible spouse of an eligible individual for a taxation year. An ineligible individual cannot qualify as an eligible individual (*i.e.*, may not claim the WITB) and does not qualify as an eligible spouse for the purpose of the Family WITB.

An ineligible individual for a taxation year means an individual who is described in paragraphs 149(1)(*a*) or (*b*) of the Act at any time in the taxation year, an individual (other than an individual who had an eligible dependant for the taxation year) who was enrolled as a full-time student at a designated educational institution for a total of more than 13 weeks in the taxation year, or an individual who was confined to a prison or similar institution for a period of at least 90 days during the taxation year.

For information on the meaning of eligible individual and eligible spouse, please refer to the commentary to the definitions "eligible individual" and "eligible spouse" in this subsection.

"return of income"

The definition "return of income" is relevant in that the WITB is only available to an individual in a taxation year if the individual has filed a return of income for the year. A return of income means the return (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(*e*) or subsection 150(4) of the Act) that is required to be filed for the taxation year or that would be required to be filed if the individual had tax payable under Part I of the Act for the taxation year.

"working income"

The definition "working income" is relevant in determining if an eligible individual qualifies for the WITB in a taxation year. For example, to qualify for the Basic WITB, a single individual must have at least $3,000 of working income in the year (or, in the case of an individual with an eligible spouse, combined working income of $3,000). To qualify for the WITB Supplement, an individual must have at least $1,750 of working income in the year.

An individual's working income for a taxation year is the total of the individual's income from employment and from research grants, fellowships, scholarships, bursaries or prize included under paragraph 56(1)(*n*) or (*o*) of the Act (determined without reference to the deductions allowed in section 8 of the Act) and from any businesses carried on by the individual (otherwise than as a specified member of a partnership). An individual's working income for a taxation year also includes any of these amounts that would, but for paragraph 81(1)(*a*) and subsection 81(4) of the Act, be included in the individual's income for the year. Paragraph 81(1)(*a*) excludes from income amounts that are exempt from income tax under another enactment of Parliament (other than a tax treaty) while subsection 81(4) excludes the first $1,000 of an allowance received by an emergency volunteer.

Deemed payment on account of tax

ITA
122.7(2)

New subsection 122.7(2) of the Act contains the rules governing the Basic WITB. It provides that an eligible individual for a taxation year, who makes a claim for the Basic WITB in his or her return of income for the year, is deemed to have paid, on account of tax payable under Part I for the year, an amount determined in accordance with a formula. This amount (*i.e*, the Basic WITB), if any, will depend on whether the individual has an eligible spouse or eligible dependant for the year and on the working income and adjusted net income of the individual (or, in the case of an individual with an eligible spouse, the combined working income and adjusted net income of both individuals). The terms "adjusted net income", "eligible individual", "eligible spouse" and "working income" are defined in new subsection 122.7(1).

The Basic WITB is comprised of a tax credit for single individuals with no dependants (Single WITB) and a tax credit for couples and single individuals with one or more eligible dependants (Family WITB). For 2007, the Single WITB is computed by taking 20 per cent of each dollar of an individual's working income in excess of $3,000 up to a maximum credit of $500 and subtracting from this amount 15 per cent for each dollar that the individual's adjusted net income exceeds $9,500. The Family WITB is computed by taking 20 per cent of each dollar of the working income of the individual (and, if applicable, the individual's eligible spouse) up to a maximum credit of $1,000 and subtracting from this amount 15 per cent for each dollar that the adjusted net income of the individual (and, if applicable, the individual's eligible spouse) exceeds $14,500. The effect of this calculation is that, for the 2007 taxation year, the Single WITB will be reduced to zero for individuals with adjusted net income in excess of $12,832 while the Family WITB will be reduced to zero for single parents (and couples) with an adjusted net income (or combined adjusted net income) in excess of $21,167.

The maximum credit for the Basic WITB ($500 and $1,000) and the adjusted net income thresholds ($9,500 and $14,500) will be indexed annually, for taxation years ending after 2007, by reference to changes in the CPI.

New subsection 122.7(2) is subject to new subsections 122.7(4) and (5), which contain rules intended to ensure that, in the case of cohabiting spouses or common-law partners, only one of the spouses or partners claims the WITB for a taxation year.

Examples of the computation of the Basic WITB (Single and Family) are provided following the commentary to new subsection 122.7(12).

Deemed payment on account of tax - Disability supplement

ITA
122.7(3)

New subsection 122.7(3) of the Act contains the rules governing the WITB Supplement. It provides that an eligible individual for a taxation year who is entitled to the disability tax credit and who files a return of income for the year is deemed to have paid, at the end of the year, on account of tax payable under Part I, an amount determined in accordance with a formula. This amount (*i.e.*, the WITB Supplement) if any, will depend on the working income and the adjusted net income of the individual (or, in the case of an individual with an eligible spouse, the combined adjusted net income of both individuals). The terms "adjusted net income", "eligible individual", "eligible spouse" and "working income" are defined in new subsection 122.7(1).

The WITB Supplement is computed by taking 20 per cent for each dollar of the individual's working income in excess of $1,750 up to a maximum of $250 (indexed after 2007) and subtracting from this amount 15 per cent of the individual's adjusted net income in excess of certain thresholds (or 7.5 per cent where the individual had an eligible spouse who was also entitled to claim the disability tax credit). In 2007, the adjusted net income thresholds are $12,833 (for a single individual with no dependants) and $21,167 (for a couple or a single individual with one or more dependants).

The maximum credit for the WITB Supplement ($500 and $1,000) and the adjusted net income thresholds ($12,833 and $21,167) will be indexed annually, for taxation years ending after 2007 by reference to changes in the CPI.

Examples of the computation of the WITB Supplement are provided following the commentary to new subsection 122.7(12) of the Act.

Eligible spouse deemed not to be an eligible individual

ITA
122.7(4)

New subsection 122.7(4) of the Act deems an eligible spouse not to be an eligible individual for the purpose of the Basic WITB if the eligible spouse made a joint application with the eligible individual for an advance payment of the WITB and the advance payment was received by the eligible individual. This provision is intended to ensure that, in the case of a couple, the individual who receives the advance payment is the individual who claims the Basic WITB for the year.

For information on advance payments, please refer to the commentary to new subsections 122.7(6) to (8).

Amount deemed to be nil

ITA
122.7(5)

New subsection 122.7(5) of the Act provides that where an eligible individual and an eligible spouse of the eligible individual both make a claim for the Basic WITB, the amount of the Basic WITB is deemed to be nil. This provision is intended to ensure that a couple does not file duplicate claims for the Basic WITB. The terms "eligible individual" and "eligible spouse" are defined in new subsection 122.7(1).

Application for advance payment

ITA
122.7(6)

New subsection 122.7(6) of the Act sets out the requirements governing applications for advance payments of the WITB. This subsection, which applies for the 2008 and subsequent taxation years, provides that an application for an advance payment must be made in prescribed form and submitted to the Minister of National Revenue between January 1 and September 1 of the relevant year. In the case of cohabiting spouses or common law partners, a joint application must be made in which the spouses or partners designate which of them is to receive the advance payment. The individual designated in a joint application must have either the higher expected working income for the taxation year or be an individual who can reasonably be expected to be entitled to the WITB Supplement for the year.

Advance payment

ITA
122.7(7)

New subsection 122.7(7) of the Act, which applies for the 2008 and subsequent taxation years, provides that the Minister of National Revenue may, subject to the restrictions set out in new subsection 122.7(8), pay to an individual who has applied for an advance payment one or more amounts which, in total, do not exceed one-half of the individual's estimated WITB (*i.e.*, one-half of the total of the Basic WITB and the WITB Supplement).

An advance payment under new subsection 122.7(7) will normally be made on the same payment cycle as the Goods and Services Tax (GST) Credit. For example, an advance payment approved in May 2008 will normally be paid in three equal instalments that are on each of July 5 and October 5, 2008, and January 5, 2009. In other cases, depending on the amount of the advance payment, the Minister may pay the amount in one lump sum.

Limitation - advance payment

ITA
122.7(8)

New subsection 122.7(8) of the Act provides that an advance payment of the estimated WITB shall not be made to an individual if the total amount estimated to be payable to the individual is less than $100 or the individual did not file a return of income for a preceding taxation year in respect of which the individual received an advance payment. The latter prohibition is intended to ensure that no portion of an advance payment for the previous year is repayable before another advance payment is made.

Notification to Minister

ITA
122.7(9)

New subsection 122.7(9) of the Act requires an individual who has applied for an advance payment to notify the Minister of National Revenue of the occurrence of certain events that may affect the individual's entitlement to the WITB. More specifically, this provision requires an individual who has applied for an advance payment in a taxation year to notify the Minister if, in the taxation year, the individual ceases to be resident in Canada, ceases to be the cohabiting spouse or common-law partner of another person with whom the individual made the application, enrols as a full-time student at a designated educational institution, or is confined to a prison or similar institution. The individual is required to notify the Minister before the end of the first month following the month the event occurs.

Special rule for eligible dependant

ITA
122.7(10)

New subsection 122.7(10) of the Act deems a child not to be an eligible dependant of an individual for a taxation year if the child is also an eligible dependant of another individual for the year and both individuals identify the child as an eligible dependant for the purpose of the Basic WITB or the WITB Supplement. This provision is intended to ensure that not more than one parent identifies the child as an eligible dependant in a taxation year.

Effect of bankruptcy

ITA
122.7(11)

New subsection 122.7(11) of the Act is a special rule that applies in computing the WITB where an eligible individual or an eligible spouse of an eligible individual becomes bankrupt in a taxation year. It provides that, notwithstanding subsection 128(2) of the Act, any reference to the taxation year of the bankrupt individual is deemed to be a reference to the calendar year. In addition, it provides that the individual's working income and adjusted net income from both the pre-bankruptcy and post-bankruptcy periods will be taken into consideration in computing the WITB.

Special rules in the event of death

ITA
122.7(12)

New subsection 122.7(12) of the Act provides that an individual who dies after June 30 of a calendar year is deemed to meet certain status requirements that are relevant to the WITB. It is intended to ensure that an individual who dies more than six months after the beginning of a calendar year may qualify as an eligible individual, eligible spouse or eligible dependant for the year.

WITB Examples

These following examples are intended to illustrate the computation of the WITB in various circumstances utilizing the threshold amounts and maximum credit amounts in effect for the 2007 taxation year. Any computations that relate to the 2008 taxation year would have to be modified to take into consideration the effect of indexing.

1. Single WITB (with advance payment)

Jérôme is a single eligible individual with no dependants. He begins work in May 2008 following a four-month period of unemployment. At the time he begins work, Jérôme expects to earn approximately $10,000 of employment income for the year. Jérôme also starts a small business in 2008, which he does not expect to be immediately profitable.

Jérôme applies for an advance payment of the WITB in May 2008. Based on his estimated working income for the year ($10,000), Jérôme receives an advance payment of $213 under new subsection 122.7(7). The advance payment is paid to him in three instalments of $71 along with his quarterly GST credit cheques.

Jérôme files his 2008 tax return before the end of April 2009 and makes a claim for the Basic WITB. His total employment income for the 2008 taxation year, including some unexpected overtime work, was $12,000. However, Jérôme incurred a business loss of $1,500, leaving him with an adjusted net income for the 2008 taxation year of $10,500. He was not eligible to claim the disability tax credit in 2008.

Based on his working income and adjusted net income, Jérôme would be entitled to a Basic WITB of $350 for the 2008 taxation year, calculated as follows:

$$A - B$$

where

A is the lesser of:	*(a)*	*$500, and*	
	(b)	*.20($12,000 - $3,000)*	
			$500
B is:		*.15($10,500 - $9,500)*	*($150)*
			$350

After taking into consideration the advance payment of $213, Jérôme receives a tax refund equal to $137.

If Jérôme had not incurred the business loss for the year, his adjusted net income would have been $12,000, leaving him with a WITB entitlement of $125. In this case, Jérôme would have been required to repay $88 of the advance payment (i.e., the amount by which the advance payment would have exceeded his WITB entitlement) or offset the excess advance payment with an amount that would otherwise be payable to him as a tax refund for the year.

2. Family WITB (cohabiting spouses or common-law partners)

Angelina is an eligible individual for the 2007 taxation year and on December 31, 2007, she has a common-law partner who is an eligible spouse. Both Angelina and her partner are employed during the year. Angelina earns $13,000 (including tips) working at a restaurant while her partner earns $6,000 in a part-time sales position. Neither Angelina nor her partner is entitled to the disability tax credit for the year.

Angelina and her partner do not apply for an advance payment and only Angelina makes a claim for the WITB for the 2007 taxation year. Based on their combined working income and adjusted net income for the year of $19,000, Angelina would be entitled to a Family WITB of $325, calculated as follows:

$$A - B$$

where

A is the lesser of:	*(a) $1,000, and*	
	(b) .20($19,000 - $3,000)	
		$1,000
B is:	*.15($19,000 - $14,500)*	*($675)*
		$325

If Angelina's partner did not qualify as an eligible spouse for the taxation year (e.g., he or she was not resident in Canada throughout the year), Angelina would not have been entitled to the Family WITB. In that case, Angelina would have been treated as a single individual for the purpose of computing her WITB entitlement. Based on her working income and adjusted net income of $13,000, Angelina would not receive the WITB in 2007 since the Single WITB is reduced to nil in 2007 for an individual with adjusted net income in excess of $12,832.

3. Family WITB with WITB Supplement

Galen and his spouse are eligible individuals for the 2007 taxation year and both of them are entitled to claim the disability tax credit. Galen's working income for the year is $13,000 and his spouse's working income is $2,500. Their combined adjusted net income for the year is $18,000 (the difference between their combined working income and adjusted net income is attributable to interest income on Galen's Canada Savings Bonds).

In filing his income tax return for the 2007 taxation year, Galen claims the Family WITB and the WITB Supplement. Galen's spouse also files a tax return for the year and claims the WITB Supplement. Based on their working income and adjusted net income, Galen and his spouse would calculate their WITB entitlements as follows:

Galen:

1. Family WITB

A – B

where

A is the lesser of:	*(a)*	*$1,000; and*	
	(b)	*20($15,500 – $3,000)*	
			$1,000
B is:		*.15($18,000 – $14,500)*	*($525)*
			$475

2. WITB Supplement

C – D

where

C is the lesser of:	*(a)*	*$250; and*	
	(b)	*.20($13,000 – $1,750)*	*$250*
D is:		*.075($18,000 – $21,167)*	*($0)*
			$250

Galen's Spouse:

3. WITB Supplement

C – D

where

C is the lesser of:	*(a)*	*$250; and*	
	(b)	*.20($2,500 – $1,750)*	
			$150
D is:		*.075($18,000 – $21,167)*	*($0)*
			$150

4. Family WITB (single individual with an eligible dependant)

Gurinder is an eligible individual for the 2007 taxation year and on December 31, 2007, he has an eligible dependant. Gurinder's working income and adjusted net income for the 2007 taxation year is $17,500. In these circumstances, Gurinder would be entitled to a Family WITB equal to $550, calculated as follows:

$$A - B$$

where

A is the lesser of:	*(a)*	*$1,000, and*	
	(b)	*.20($17,500 - $3,000)*	*$1,000*
B is:		*.15($17,500 - $14,500)*	*($450)*
			$550

5. Death of an Eligible Spouse

Ernie and Hazel were married in 2002 and they have been resident in Canada since 2004. On October 30, 2007 Ernie is fatally injured in an automobile accident. For the 2007 taxation year, Ernie's working income is $6,000 and his adjusted net income is $9,000 while Hazel's working income and adjusted net income is $8,000. On December 31, 2007, Hazel is a single eligible individual with no dependants.

Assuming that Ernie was not an ineligible individual at the time of his death, he will be considered to be an eligible spouse of Hazel for the 2007 taxation year (please refer to new subsection 122.7(12)). Based on their combined working income ($14,000) and adjusted net income ($17,000), Hazel will be entitled to claim a Family WITB in respect of the 2007 taxation year equal to $625, calculated as follows:

$$A - B$$

where

A is the lesser of:	*(a)*	*$1,000, and*	
	(b)	*.20($14,000 - $3,000)*	
			$1,000
B is:		*.15($17,000 - $14,500)*	*($375)*
			$625

Modification for purposes of provincial program

ITA
122.71

New section 122.71 of the Act permits the Minister of Finance to enter into an agreement with the government of a province or territory to modify the WITB with respect to residents of that province or territory. This provision, which applies to the 2007 and subsequent taxation years, is intended to allow the Government of Canada to implement province - or territory - specific changes to the design of the WITB to better harmonize it with existing provincial and territorial income support programs.

Clause 33

Investment tax credits

ITA
127

Section 127 of the Act permits deductions in computing taxable income in respect of logging, political contributions and investment tax credits (ITCs).

ITA
127(5)

Subsection 127(5) of the Act provides for the deduction of ITCs from a taxpayer's Part I tax otherwise payable. Subparagraphs 127(5)(*a*)(i) and (ii) are amended to add a reference to ITCs in respect of the creation of a child care space by a taxpayer. A child care space ITC is earned in respect of eligible child care space expenditures incurred by a taxpayer that carries on business in Canada (other than a business that otherwise includes the provision of child care spaces). For further information, please refer to the commentary to the new definitions "child care space amount" and "eligible child care space expenditure", and new paragraph (*a*.5) of the definition "investment tax credit" in subsection 127(9). This change applies on and after March 19, 2007.

Investment tax credit of testamentary trust

ITA
127(7)

Subsection 127(7) of the Act permits a testamentary trust or a communal organization that is treated as an *inter vivos* trust to allocate its ITCs to its beneficiaries. Subsection 127(7) is amended, consequential to the introduction of ITCs in respect of child care space amounts, to add a reference to new paragraph (*a*.5) of the definition "investment tax credit" in subsection 127(9). This amendment applies on and after March 19, 2007.

Investment tax credit of partnership

ITA
127(8)

Subsection 127(8) of the Act provides for the allocation of the ITCs earned by a partnership to its partners. In general terms, subsection 127(8) allocates a portion of a partnership's ITCs to each partner based on what can reasonably be considered to be the particular partner's share of the ITCs. Subsection 127(8) is amended, consequential to the introduction of ITCs in respect of the child care space amount, to include a reference to new paragraph (*a.5*) of the definition "investment tax credit" in subsection 127(9) and to new subsections 127(28.1) and (28.11). This amendment applies on and after March 19, 2007.

Expenditure base

ITA
127(8.2)(*b*)(i)(A.2)

Subsection 127(8.2) defines, for the purpose of the at-risk rules in subsection 127(8.1), a limited partner's expenditure base for a taxation year (its fiscal period) of a partnership. Paragraph 127(8.2)(*b*) ensures that in no event can a limited partner's expenditure base exceed his or her proportionate share of the aggregate expenditure base of all limited partners of the partnership.

New clause 127(8.2)(*b*)(i)(A.2) is added to the Act, consequential to the introduction of ITCs in respect of child care space amounts, to ensure that eligible child care space expenditures incurred by a limited partnership in respect of the creation of child care space in a taxation year (its fiscal period) are taken into account in determining a limited partner's expenditure base. This amendment applies on and after March 19, 2007.

Amount of unallocated partnership ITC

ITA
127(8.31)

Subsection 127(8.31) of the Act provides for the determination of an amount, for reallocation to a general partner of a partnership, that cannot be allocated to a specified member of the partnership because of paragraph 127(8)(*b*) or to a limited partner of the partnership because of subsection 127(8.1). Subsection 127(8.31) is amended in two respects.

First, paragraph 127(8.31)(*a*) is amended, consequential to the introduction of ITCs in respect of child care space amounts, to include a reference to new paragraph (*a.5*) of the definition "investment tax credit" in subsection 127(9). This change ensures that eligible child care space expenditures incurred by a partnership in respect of the creation of child care space in a taxation year (its fiscal period) are taken into account in determining the reallocation of any unallocated partnership ITCs to a general partner of the partnership. This amendment applies on and after March 19, 2007.

Second, subparagraph 127(8.31)(*b*)(iii) is repealed to ensure that the calculation of a reallocated amount under subsection 127(8.31) does not result in an anomalous amount. Consistent with the initial application date of section 127(8.31), this change applies to the 2007 and subsequent taxation years.

Definitions

ITA
127(9)

Subsection 127(9) of the Act provides various definitions relevant for the purpose of calculating the investment tax credits (ITCs) of a taxpayer. Consequential to the amendments in respect of flow-through mining expenditures and the introduction of ITCs in respect of child care space amounts, new definitions are added, and the existing definitions in subsection 127(9) are amended, as follows.

"child care space amount"

The definition "child care space amount" of a taxpayer for a taxation year means, if the provision of child care space is ancillary to one or more businesses of the taxpayer carried on in Canada that do not otherwise include the provision of child care spaces, the lesser of

- $10,000 times the number of new child care spaces created by the taxpayer during the taxation year in a licensed child care facility for the benefit of the children of the taxpayer's employees, or of a combination of children of the taxpayer's employees and other children; and
- 25 per cent of the eligible child care space expenditure incurred by the taxpayer in the taxation year.

The child care space amount is the net ITC available to a taxpayer in respect of the eligible child care space expenditure of the taxpayer. This definition applies to expenditures incurred on and after March 19, 2007.

"eligible apprentice"

The definition "eligible apprentice" means an individual who is employed in a prescribed trade in Canada during the first two years of the individual's apprenticeship contract, which is registered with Canada or a province under an apprenticeship program designed to certify or license individuals in the trade.

The definition, "eligible apprentice" is amended in two respects:

First, the reference to "first two years" in the definition is changed to "first twenty-four months." Second, the reference to "a prescribed trade in Canada" is changed to a reference to "a trade prescribed in respect of a province or Canada, as the case may be." Consistent with the initial application date of this definition, these amendments apply to taxation years that end on or after May 2, 2006.

"eligible child care space expenditure"

The definition "eligible child care space expenditure" of a taxpayer for a taxation year means the total of certain expenditures incurred by the taxpayer in the taxation year for the sole purpose of creating one or more new child care spaces in a licensed child care facility operated for the benefit of the children of the taxpayer's employees, or of a combination of children of the taxpayer's employees and other persons. The expenditures that are included for this purpose are those incurred by the taxpayer:

- to acquire depreciable property of a prescribed class (other than a specified property), or
- to make a specified child care start-up expenditure.

The eligible child care space expenditure is the gross amount in respect of which a taxpayer can claim a child care space amount. This definition applies to expenditures incurred on and after March 19, 2007.

"flow-through mining expenditure"

The definition "flow-through mining expenditure" in subsection 127(9) of the Act defines the expenses ("eligible expenses") that qualify for the 15 per cent ITC in respect of specified surface "grass-roots" mineral exploration. Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after May 1, 2006 and before April 1, 2007.

The definition, "flow-through mining expenditure" is amended to include eligible expenses incurred by a corporation after March 2007 and before 2009 where the expenses are incurred under a flow-through share agreement made after March 2007 and before April 2008.

"investment tax credit"

The definition "investment tax credit" in subsection 127(9) of the Act provides for the calculation of a taxpayer's ITC at the end of a taxation year and also ensures that a tax credit will not be generated in circumstances where the business income to which a cost or expenditure relates is not subject to income tax.

This definition is amended by adding new paragraph (*a.5*) and new subparagraphs (*e.1*)(vi) and (vii). New paragraph (*a.5*) and new subparagraph (*e.1*)(vii) are added consequential to the introduction of ITCs for the creation of child care spaces in Canada.

New paragraph (*a.5*) adds a taxpayer's child care space amount for a taxation year to the calculation of the ITC for the year. New paragraph (*a.5*) applies to taxation years that end on and after March 19, 2007, in respect of expenditures incurred on and after March 19, 2007.

New subparagraph (*e.1*)(vii) ensures that a taxpayer's ITC for a taxation year is increased as a result of a repayment of government assistance or non-government assistance that reduced an eligible child care space expenditure of the taxpayer. New subparagraph (*e.1*)(vii) applies to taxation years that end on or after March 19, 2007.

New subparagraph (*e.1*)(vi) ensures that a taxpayer's ITC for a taxation year is increased as a result of a repayment of government assistance, non-government assistance or contract payment that reduced the eligible salary and wages payable to an eligible apprentice. New subparagraph (*e.1*)(vi) applies to taxation years that end on or after May 2, 2006.

"specified child care start-up expenditure"

The new definition "specified child care start-up expenditure" is relevant for the purpose of calculating the eligible child care space expenditure of a taxpayer. The definition lists the start-up costs (other than a cost incurred to acquire a depreciable property) that can be included in calculating the eligible child care space expenditure of a taxpayer. To be included in the definition, an expenditure must be:

- a landscaping cost incurred to create, at the child care facility, an outdoor play area for children,
- an architectural fee for designing the child care facility or a fee for advice on planning, designing and establishing the child care facility,
- a cost of construction permits in respect of the child care facility,
- an initial licensing or regulatory fee in respect of the child care facility, including fees for mandatory inspections,
- a cost of educational materials for children, or
- a similar amount incurred for the sole purpose of the initial establishment of the child care facility.

This definition applies to expenditures incurred on and after March 19, 2007.

"specified percentage"

The definition "specified percentage" in subsection 127(9) of the Act sets out the relevant rates at which ITCs are earned in different circumstances.

Paragraph (*f.1*) of the definition "specified percentage", which provides the percentage of certain amounts subject to recapture, is restructured into subparagraphs (i) to (iii), and adds references to ITCs in respect of the apprenticeship job creation ITC and the child care space ITC.

The reference to 20 per cent in paragraph (*f.1*), in respect of subsections 127(18) to (20), is moved to new subparagraph (*f.1*)(i). A reference to a specified percentage of 10 per cent in respect of eligible salary and wages payable to an eligible apprentice under paragraph 127(11.1)(*c.4*) is included in new subparagraph (*f.1*)(ii), and a reference to a specified percentage of 25 per cent in respect of an eligible child care space expenditure under new paragraph 127(11.1)(*c.5*) is included in new subparagraph (*f.1*)(iii). New subparagraphs (*f.1*)(i) and (ii) of the definition apply to taxation years that end on or after May 2, 2006. New subparagraph (*f.1*)(iii) of the definition applies to taxation years that end on or after March 19, 2007.

"specified property"

The definition "specified property" is relevant for the purpose of calculating the eligible child care space expenditure of a taxpayer and lists the properties the cost of which cannot be included in calculating the eligible child care space expenditure of a taxpayer. These properties are:

- a motor vehicle or any other motorized vehicle, or
- a property that is, or is located in, or attached to, a residence of
  - the taxpayer,
  - an employee of the taxpayer,
  - a person who holds an interest in the taxpayer, or
  - a person related to any of the persons mentioned above.

This definition applies to expenditures incurred on and after March 19, 2007.

Investment tax credit

ITA
127(11.1)

Subsection 127(11.1) of the Act sets out various rules for determining amounts to be included for the purpose of the definition "investment tax credit" in subsection 127(9). These rules provide for the reduction of the capital cost of a property and the reduction of qualified expenditures by amounts that qualify as assistance or contract payments. Subsection 127(11.1) is amended in two respects.

First, paragraph (*c.4*) is amended to ensure that it is the eligible salary and wages payable by a taxpayer for the taxation year, and not the taxpayer's apprenticeship expenditure for the taxation year, to which the reduction applies for assistance payments. This amendment applies to taxation years that end on or after May 2, 2006.

Second, new paragraph (*c.5*) is added to reduce the amount of a taxpayer's eligible child care space expenditure by the amount of any government or non-government assistance. New paragraph (*c.5*) applies to taxation years that end on or after March 19, 2007.

Time of expenditure and acquisition

ITA
127(11.2)

Subsection 127(11.2) of the Act provides that for the purposes of claiming an ITC under subsection 127(5), or allocating an ITC under subsection 127(7) or (8), property is not considered to have been acquired, and expenditures are not considered to have been made, until the property is considered to have become "available for use."

Subsection 127(11.2) is amended, in three respects, consequential to the introduction of ITCs in respect of child care space amounts:

- a reference to new paragraph (*a.5*) of the definition "investment tax credit" in subsection 127(9) is added to the preamble of subsection 127(11.2),
- a reference to the new definition of an "eligible child care expenditure" is added to paragraph 127(11.2)(*b*), and
- a reference to new subparagraph 127(27.12)(*b*)(i) is added to the postamble of subsection 127(11.2).

This amendment applies on and after March 19, 2007.

Recapture of investment tax credit – child care space amount

ITA
127(27.1)

New subsection 127(27.1) of the Act applies if a taxpayer has claimed a child care space amount, under the investment tax credit (ITC) regime, in respect of a property, and the taxpayer then disposes of the property within 60 months of acquiring it. The subsection requires a taxpayer to add an amount, determined under new subsection 127(27.12), to the taxpayer's tax payable under Part I. New subsection 127(27.1) applies on and after March 19, 2007.

Disposition

ITA
127(27.11)

New subsection 127(27.11) of the Act extends the meaning of "disposition" of a property for purposes of determining the recapture amount under new subsection 127(27.1).

Generally, those circumstances in which recapture occurs are the cessation or lease of the use of a child care space, or the conversion to a use other than the use as a child care space, where the cost of the related property was claimed as an eligible child care space expenditure under the ITC regime in any of the 60 preceding months.

New paragraph 127(27.11)(*a*) treats a child care space to be a property disposed of if the child care space ceases to be available.

New paragraph 127(27.11)(*b*) treats child care spaces to cease to be available in reverse chronological order to their creation; i.e., the last child care space created is considered to be the first to cease as such a space.

New paragraph 127(27.11)(*c*) treats a property acquired by a taxpayer or a partnership in respect of a child care space to have been disposed of, if the property

- is leased to a lessee for any purpose, including as a child care space; or
- is converted to a use other than to a use for the child care space.

New subsection 127(27.11) applies on and after March 19, 2007.

Amount of recapture

ITA
127(27.12)

New subsection 127(27.12) of the Act establishes the investment tax credit (ITC) recapture amount that is required to be added under subsection 127(27.1) or (28.1) to the Part I tax payable by a taxpayer (including a member of a partnership) in circumstances described in new subsection 127(27.11). New paragraphs 127(27.12)(*a*) and (*b*) establish the amount of the recapture.

New paragraph 127(27.12)(*a*) establishes the amount required to be added to the tax payable under Part I of the Act where the taxpayer has disposed of a child care space. This amount will generally be equal to the amount that can reasonably be considered to have been included under paragraph (*a.5*) of the definition "investment tax credit" in subsection 127(9), by the taxpayer or partnership.

In circumstances where new subsection 127(27.11) treats a taxpayer as having disposed of a property, but new paragraph 127(27.12)(*a*) does not apply, new paragraph 127(27.12)(*b*) establishes the amount required to be added to the tax payable by the taxpayer under Part I of the Act. This amount is the lesser of the amount that can reasonably be considered to be a taxpayer's child care space amount and 25 per cent of the proceeds of disposition in respect of the related property (or of its fair market value if the property is disposed of to a person with which the taxpayer does not deal with at arm's length). New subsection 127(27.12) applies on and after March 19, 2007.

Recapture of partnership's investment tax credits – child care property

ITA
127(28.1)

New subsection 127(28.1) of the Act provides an investment tax credit (ITC) recapture rule that applies where the property to which the recapture relates is partnership property. The amount calculated as the partnership's ITC available for allocation under subsection 127(8) is reduced by the amount determined under new subsection 127(27.12). New subsection 127(28.1) applies on and after March 19, 2007.

Addition to tax

ITA
127(30)

Subsection 127(30) of the Act applies where, at the end of a taxation year, a taxpayer is a member of a partnership that does not have a large enough balance in the partnership's ITC balance otherwise available for allocation under subsection 127(8) to offset the ITC recapture required by subsection 127(28) or (35). In those circumstances, the total of all amounts which are added in calculating the partnership's ITCs balance available for allocation under subsection 127(8) is less than the total of all amounts which reduce the partnership ITC balance. The amount by which the reductions to the partnership's ITC balance exceed the additions to it can be viewed as a "negative" partnership ITC balance. The portion of the amount by which the partnership ITC balance is "negative" (the "excess") that can reasonably be considered to be the taxpayer's share is added to the taxpayer's tax payable under Part I for the year.

Subsection 127(30) is restructured, and is amended to add references to new subsection 127(28.1). This change will provide for ITC recapture in respect of the disposition of partnership property as required by new subsection 127(28.1), for allocation under subsection 127(8), consequential to the introduction of ITCs in respect of child care space amounts. This change applies on and after March 19, 2007.

Clause 34

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
141(5)

This amendment is consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 55 for more information.

Clause 35

Registered education savings plans - definitions

ITA
146.1(1)

Subsection 146.1(1) of the Act defines a number terms that apply for registered education savings plans (RESPs).

"designated provincial program"

Subsection 146.1(1) of the Act is amended to add the definition "designated provincial program". The definition is relevant for the purposes of the deduction under paragraph 60(*x*) and the definitions "contribution" and "trust" in subsection 146.1(1). A "designated provincial program" is a program administered pursuant to an agreement entered into under the *Canada Education Savings Act* or a prescribed program. It is intended that the education savings incentive program proposed by the Government of Quebec in its 2007 budget be prescribed for this purpose.

This amendment applies to the 2007 and subsequent taxation years.

"contribution"

Several provisions in section 146.1 and Part X.4 of the Act, as well as provisions in the *Canada Education Savings Act*, apply to contributions made to RESPs. The definition "contribution" ensures that, for the purposes of these provisions, an amount paid into an RESP under the *Canada Education Savings Act* or under a similar provincial program administered under that Act is not considered to be a contribution to the plan.

The definition "contribution" is amended to replace the reference to a program administered pursuant to an agreement entered into under the *Canada Education Savings Act* with a reference to the newly defined expression "designated provincial program". The effect of this amendment is to ensure that a payment into an RESP under a prescribed program is not considered to be a contribution to the plan.

This amendment applies to the 2007 and subsequent taxation years.

"trust"

For the purpose of the RESP rules, a "trust" is defined to be any person who irrevocably holds property pursuant to an education savings plan for a number of specified purposes. Under paragraph (*c.1*) of the definition, a trust can provide for the repayment of amounts under the *Canada Education Savings Act* or under a similar provincial program administered under that Act.

Paragraph (*c.1*) of the definition "trust" is amended to replace the reference to a program administered pursuant to an agreement entered into under the *Canada Education Savings Act* with a reference to the newly defined expression "designated provincial program". The effect of this amendment is to ensure that an RESP trust can provide for the repayment of amounts in connection with a prescribed program.

This amendment applies to the 2007 and subsequent taxation years.

Clause 36

Charities

ITA
149.1

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered charity status. Section 149.1(1) is amended, concurrently with the addition of new section 149.2 and subsections 188.1(3.1) and (3.2) of the Act, to introduce an excess corporate holdings regime for private foundations. In general, these rules require that a private foundation divest itself of excessive shareholdings in corporations. Furthermore, a private foundation may be required to disclose material corporate shareholdings in its annual prescribed information return.

The new definitions in subsection 149.1(1) are generally effective as of March 19, 2007. Other amendments to section 149.1 generally apply to the taxation years of private foundations that begin on or after March 19, 2007. For details regarding transitional rules that apply in certain circumstances, refer to the commentary for subsection 149.2(8) of the Act.

Definitions

ITA
149.1(1)

The definitions in subsection 149.1(1) of the Act apply for the purposes of section 149.1 and Part V of the Act. Subsection 149.1(1) is amended to also apply these definitions for the purposes of new section 149.2 of the Act. In addition, new definitions are added that are relevant to amendments in respect of the corporate shareholdings of private foundations.

"divestment obligation percentage"

Under the new provisions affecting private foundations with corporate shareholdings, where, at the end of its taxation year, a private foundation has an "excess corporate holdings percentage" (as defined in subsection 149.1(1) of the Act) in respect of a class of shares of the capital stock of a corporation, the foundation is required to eliminate that excess corporate holdings percentage within a specified period. That is, the existence of such an excess results in a "divestment obligation percentage" of the foundation in respect of that class, as newly defined in subsection 149.1(1).

A net increase in the excess corporate holdings percentage of a private foundation for a taxation year is allocated to the divestment obligation percentage for that year or to one or more of the next five taxation years, according to the order established in new subsection 149.2(5) of the Act.

A net decrease to the foundation's excess corporate holdings percentage for a taxation year reduces first the divestment obligation percentage of the foundation for that year. Any unapplied decrease at that time is applied under new subsection 149.2(7) to any subsequent-year divestment obligation percentage of the foundation that exists at that time.

Allocation of a net increase in excess corporate holdings percentage

More specifically, a net increase in the excess corporate holdings percentage of a private foundation for a taxation year, in respect of a class of shares, is allocated under subsection 149.2(5) to the foundation's divestment obligation percentage for the current taxation year or one of the five subsequent taxation years in the following order:

- Acquisitions of shares of the class by the foundation in the current taxation year are reviewed as to whether they resulted from purchases by the foundation for consideration or, rather, were acquired in some other manner. Any increase attributable to such purchases is allocated to the divestment obligation percentage of the foundation in respect of that class of share for the current taxation year.
- If there is any remaining net increase to allocate, the divestment obligation percentage for the fifth subsequent taxation year is increased by the amount that is the lesser of that amount remaining and the percentage of shares acquired by the private foundation in the current year by way of bequest.
- Similarly, if there remains any further net increase to allocate, the divestment obligation percentage for the second subsequent taxation year is increased by the amount that is the lesser of that amount remaining and the total of
  - the percentage of shares acquired by the private foundation in the current year by way of gift, other than from a relevant person or by way of bequest; and
  - the increase in the foundation's holdings resulting from the redemption, acquisition or cancellation of the issued and outstanding shares of that class in the current year by the corporation.
- Finally, the divestment obligation percentage for the next subsequent taxation year is increased by any of the net increase that remains unallocated.

Allocation of net decrease in the excess corporate holdings percentage

If a private foundation, itself or together with relevant persons who hold the same class of corporate shares, does not reduce its excess corporate holdings percentage so that its divestment obligation percentage for a taxation year equals zero per cent, the foundation is subject to penalties according to new subsection 188.1(3.1) of the Act. However, if there is a net decrease to the excess corporate holdings percentage of a class of shares of the capital stock of a corporation for a taxation year, that decrease is allocated under new subsection 149.2(7) as follows:

- The decrease will be considered to apply first to reduce the divestment obligation percentage of that taxation year.
- Any unapplied portion of this amount will decrease the divestment obligation percentage of the subsequent taxation years in chronological order.
- If, at the end of a taxation year in which there is such a net decrease, the divestment obligation percentages for that year and all subsequent taxation years have been eliminated, any remaining amount of the net decrease for the year expires. A subsequent net increase in the excess corporate holdings percentage for a taxation year cannot be satisfied by a divestiture in a previous year.

Any divestment obligation percentage for a taxation year that has not been reduced to zero per cent (and therefore is subject to penalty) is carried forward and added to the divestment obligation percentage for the next taxation year. Therefore, the portion of any divestment obligation percentage that remains outstanding at the end of the taxation year is carried forward to a subsequent taxation year and may be subject to a penalty more than once.

For additional details regarding the allocation of a net increase or decrease in the excess corporate holdings percentage to the divestment obligation percentage of a private foundation, refer to the commentary for subsections 149.2(5) and (7).

For details regarding transitional rules that apply in certain circumstances, refer to the commentary for the subsection 149.2(8).

Example – Excess corporate holdings rules

On March 19, 2007, Foundation X held no shares of Corporation Z, a position that had not changed by the first day of the foundation's next fiscal period, January 1, 2008.

On January 15, 2008, a relevant person in respect of Foundation X donated to the foundation 45% of the Class A shares of Corporation Z. The limit that may be held without penalty is 20 %, and the deadline for divestment of an excess resulting from a donation from a relevant person is the end of the subsequent taxation year. Foundation X took a first step by selling a 15% interest on January 31, 2008.

As of December 31, 2008, Foundation X still held 30% of the Corporation Z shares, so for its 2008 taxation year the net increase in its excess corporate holdings percentage (i.e. over 20%) was 10%. As there were no other acquisitions of shares the full 10% increase was allocated to the divestment obligation percentage of 2009 (i.e. one year hence). That is, Foundation X had until the end of its 2009 taxation year to reduce that divestment obligation percentage to 0%.

The foundation filed with its 2008 annual return a list of two material transactions (i.e. the January 15 donation and the January 31 sale) and a schedule showing the opening and closing balances of Class A shares held. This list and schedule are required for every year in which Foundation X exceeds a 2% holding of Class A shares at any time in the year.

On February 15, 2009, Foundation X disposed of 10 % of the outstanding Class A shares of Corporation Z. However, on December 1, 2009, the foundation purchased 7% of the Class A shares.

The foundation's balance of Class A shares was therefore 27% at the end of 2009. As such, the net decrease for 2009 was only 3% (i.e. from 30% down to 27%). After allocation of this 3% to its 2009 divestment obligation percentage of 10%, Foundation X still had an unsatisfied obligation percentage of 7%. The CRA could assess a penalty in respect of this excess under paragraph 188.1(3.1)(a) of the Act, equal to 5% of the value of that 7% interest. Furthermore, the 7% excess was added to the divestment obligation percentage for 2010.

In 2010 an unrelated person donated 10% of the Class A shares to the foundation (for which there is a two-year period to divest). In the same year, a bequest was received of 25% of the shares (for which there is a five-year period to divest). The foundation disposed of a 7 % interest in 2010. The net increase to its excess holdings percentage for the 2010 taxation year was therefore 28% (25% + 10% - 7%). In accordance with the excess corporate holdings rules, this net increase was allocated 25% to the divestment obligation percentage of the 2015 taxation year (five years hence), and the remaining 3% to the divestment obligation percentage of the 2012 taxation year (two years hence).

Because of the share acquisitions in 2010, Foundation X did not have a net decrease to its excess corporate holdings percentage in 2010, in spite of the divestment of a 7% interest. Therefore, there was no net decrease for the foundation to allocate to its 7% divestment obligation percentage for that year (i.e. the obligation carried forward). CRA could assess a penalty on that 7% excess corporate holding for the 2010 taxation year. Again, this 7% amount was carried forward to the divestment obligation percentage for 2011.

In the result, at the beginning of 2011, Foundation X had total holdings of 55% of the Class A shares of Corporation Z. The excess corporate holdings percentage (over 20%) was therefore 35%. The foundation's divestment obligation percentages were 7% for the 2011 taxation year, 3 % for 2012 and 25% for 2015. (Note: 7% + 3% + 25 % = 35%).

During 2011, Foundation X disposed of a 15% interest in the Class A shares of Corporation Z and acquired no new shares, reducing its excess balance to 20% at the end of the year. In a schedule filed with its annual return for 2011, the foundation allocated the 15 % net decrease as follows: 7% to the 2011 divestment obligation percentage, 3% to the 2012 divestment obligation percentage, and 5% to the 2015 divestment obligation percentage. As the full obligation for 2011 was satisfied, no amount of the remaining 20% excess holdings percentage was subject to penalty in 2011. However, there remained an outstanding divestment obligation percentage of 20 % for the foundation's 2015 taxation year.

The implications for Foundation X in this example are summarized in the following table.

	Current Taxation Year			
	2008	**2009**	**2010**	**2011**
(a) Opening Balance of Excess Class A shareholdings *	Nil	10 %	7 %	35 %
(b) Closing Balance of Excess Class A shareholdings **	10 %	7 %	35 %	20 %
Net increase / <decrease> to the excess holdings percentage [(b) – (a)]	10 %	<3 %>	28 %	<15 %>
Allocation of net increase / <decrease> to the divestment obligation percentage for taxation year *(balance in parentheses)*: **				
• 2008				
• 2009	10 % *(10 %)*	<3 %> *(7 %)*		
• 2010			7 % *(7 %)*	
• 2011				7 % <7 %> *(Nil)*
• 2012			3 % *(3 %)*	<3 %> *(Nil)*
• 2013				
• 2014				
• 2015			25 % *(25 %)*	*(25 %)*
(c) *Sum of balances, 2008 to 2015* **	*10 %*	*7 %*	*35 %*	*25 %*
Unsatisfied divestment obligation percentage for current year • Add to subsequent year • Subsection 188.1(3.1) penalty applies	Nil	7 %	7 %	Nil

* This is the balance of Class A shares of Corporation Z, held by the private foundation and by all relevant persons, that **exceeds** 20 % of all such issued shares.

** Note that the Closing Balance of the excess corporate holdings percentage for a year (line (b) in the above table) will always equal the sum of the balances of the divestment obligation percentages for current and future taxation years (line (c)).

"entrusted shares percentage"

The new definition "entrusted shares percentage" in subsection 149.1(1) of the Act applies in respect of the excess corporate holdings percentage of a private foundation. Specifically, where the foundation has an entrusted shares percentage greater than 20 per cent, the excess corporate holdings percentage is calculated by using the entrusted shares percentage instead of the 20 per cent threshold.

Entrusted shares are shares of a class of the capital stock of a corporation, held by a foundation at a particular time, that were acquired by way of a gift that is subject to a trust or direction that the foundation may not dispose of them before that time. The gift must have been made

- before March 19, 2007;

- on or after March 19, 2007 and before March 19, 2012, if the gift was made by way of a will executed before March 19, 2007 and not amended on or after that date (and there is no other will executed or amended on or after March 19, 2007); or
- on or after March 19, 2007 if the gift was made under the terms of a testamentary or *inter vivos* trust created before March 19, 2007 and not amended after that date.

The excess corporate holdings rules will first include the entrusted shares percentage in the taxation year of a foundation following the year, if any, in which the trust or direction no longer applies.

Shares held by a foundation on March 18, 2007 are also eligible for transitional relief. This transitional relief applies in the taxation year of the foundation following the expiry, if any, of the trust or direction. For that taxation year and subsequent ones, such shares are treated under the transitional rules as if they were never subject to any trust or direction.

For details regarding transitional rules that apply in certain circumstances, refer to the commentary for subsection 149.2(8) of the Act.

"excess corporate holdings percentage"

The new definition "excess corporate holdings percentage" in subsection 149.1(1) of the Act applies in respect of the corporate shareholdings of a private foundation. An excess corporate holdings percentage in respect of a class of shares of a corporation gives rise to an obligation by the private foundation to divest of that excess in a current or future taxation year. Alternatively, relevant persons can divest to reduce the combined shareholdings.

An excess corporate holdings percentage generally arises as a result of acquisitions by a foundation for consideration or by way of a gift. It may also arise by way of acquisitions by relevant persons. The percentage of such holdings can also be affected by the issuance of new shares or the redemption and cancellation of issued shares by the corporation.

A relevant person in respect of a private foundation, as defined in subsection 149.1(1), is generally a person who does not deal at arm's length with any person who controls, or with any non-arm's length group of persons that controls, the foundation (as if the foundation were a corporation).

Specifically, an excess corporate holdings percentage in respect of a class of shares of the capital stock of a corporation refers to the number of percentage points by which the total corporate holdings percentage of the private foundation (which includes the holdings of all relevant persons) exceeds 20 per cent of the issued shares for that class. However, where the foundation has an entrusted shares percentage greater than 20 per cent, the excess corporate holdings percentage is calculated by using the entrusted shares percentage instead of the 20 per cent threshold. In general, entrusted shares are shares donated to a foundation before March 19, 2007 on condition that they be held for a specific or indefinite period.

If a private foundation holds only an insignificant interest (up to 2 per cent, as provided in subsection 149.2(1)) of the Act, its excess corporate holdings percentage is deemed to be zero per cent.

If a private foundation is, at any particular time, not a registered charity, the excess corporate holdings percentage of the foundation at that time is deemed to be zero per cent. As such, a private foundation that holds more than 20 per cent of the shares of a class of the capital stock of a corporation when it becomes a registered charity in a taxation year will have, at the end of that year, a net increase to its excess corporate holdings percentage (to the extent that it does not divest those holdings in the year). In this circumstance the foundation would have until the end of its subsequent taxation year to divest its excess corporate holdings.

Similarly, the excess corporate holdings percentage of a private foundation that ceases to be registered as such is deemed to be zero per cent, relieving the foundation of any divestment obligation.

An example of the calculation of the excess corporate holdings percentage is provided in the commentary to the definition "divestment obligation percentage" in subsection 149.1(1). For details regarding the divestment obligation percentage, a relevant person and entrusted shares, refer to the commentary for those definitions.

"material transaction"

The new definition "material transaction" subsection 149.1(1) of the Act applies in respect of the corporate shareholdings of a private foundation. In general, a material transaction of a private foundation, in respect of a class of shares of the capital stock of a corporation, means a transaction engaged in by the foundation or a relevant person if the total fair market value of the shares of the class that are acquired or disposed of exceeds the lesser of $100,000 and 0.5 per cent of the total fair market value of all of the issued and outstanding shares of the class.

A foundation may be required, as part of the prescribed information required to be reported with an information return for a taxation year beginning on or after March 19, 2007, to report any material transaction in the taxation year. For details regarding relevant persons, refer to the commentary for that definition in subsection 149.1(1).

"non-qualifying private foundation"

The new definition "non-qualifying private foundation" is relevant for the capital gains exemption for donations of publicly-listed securities in paragraph 38(*a.1*) of the Act and for the exemption from tax of the employment benefit that would otherwise be taxed when an employee donates a publicly-listed security acquired under an option granted by his or her employer under paragraph 110(1)(*d.01*) of the Act. Donations of shares to a non-qualifying private foundation are not eligible for these exemptions.

In general, a non-qualifying private foundation is a private foundation that had, on March 19, 2007, an excess corporate holdings percentage (as defined in subsection 149.1(1)) of which it has not divested itself before the end of its first taxation year that begins after March 19, 2012. For additional details regarding the excess corporate holdings percentage of a private foundation, refer to the commentary for that definition.

"original corporate holdings percentage"

The definition "original corporate holdings percentage" is relevant for the calculation of the excess corporate holdings percentage of a private foundation that is subject to the transitional rule under subsection 149.2(8) of the Act for the excess corporate holdings regime.

The "original corporate holdings percentage" is the "total corporate holdings percentage" of a foundation as of March 18, 2007. For additional details, refer to the commentary for that definition in subsection 149.1(1) of the Act.

"relevant person"

The new definition "relevant person" applies for the purpose of the calculation of the excess corporate holdings percentage of a private foundation in respect of a class of shares of the capital stock of a corporation. If a private foundation, together with any relevant persons, holds more than 2 per cent of the issued shares of a class, the foundation may be required, as part of the prescribed information required to be reported with an information return for a taxation year beginning on or after March 19, 2007, to report any material transaction engaged in by the foundation or a relevant person in the taxation year, as well as the balance of such shareholdings. Reporting is not required in respect of a relevant person whose holdings of a class of shares are small enough not to be a material interest (determined under subsection 149.2(1) of the Act) or who is found to be an estranged family member.

A relevant person, in respect of a private foundation, is generally a person who does not deal at arm's length with any person who controls, or with any non-arm's length group of persons that controls, the foundation (as if the foundation were a corporation). The existing definition "non-arm's length" in the Act includes persons related to each other. In this regard, the existing rules for determining when a corporation is related to another person will apply as if the foundation were a corporation.

However, in order not to draw in individuals whose links to the foundation are tenuous, a relevant person does not include an individual who is at least 18 years of age, living separate and apart from the controlling person or member, and whom the Minister of National Revenue, on review of an application from the foundation, has agreed is dealing at arm's length from the controlling person or member as a question of fact.

"total corporate holdings percentage"

The new definition "total corporate holdings percentage" is relevant for the calculation of the excess corporate holdings percentage of a private foundation. The total corporate holdings percentage in respect of a class of shares of a corporation is the percentage of shares of that class held by the foundation together with all relevant persons (as defined in subsection 149.1(1) of the Act) who hold a material interest in respect of that class.

Revocation of registration of private foundation

ITA
149.1(4)(*c*)

Paragraph 149.1(4)(*c*) of the Act provides that the Minister of National Revenue may revoke the registration of a private foundation that acquires control of a corporation. Paragraph 149.1(4)(*c*) is replaced concurrent with the introduction of the excess corporate holdings regime for private foundations, to provide that the Minister may revoke the registration of a private foundation that has not, in respect of its shareholdings of a corporation, reduced its divestment obligation percentage for a taxation year (if any) to zero per cent by the end of that year.

This amendment generally applies to taxation years commencing on or after March 19, 2007. However, private foundations subject to the transitional rule under subsection 149.2(8) of the Act will remain subject to existing paragraph 149.1(4)(*c*) until their transition is completed.

For more details, refer to the commentary to the definition "divestment obligation percentage" in subsection 149.1(1) of the Act, as well as to the commentary to subsections 149.2(8) and 188.1(3.1) of the Act.

Rules

ITA
149.1(12)(*a*)

Paragraph 149.1(12)(*a*) of the Act sets out the circumstances under which a charitable foundation is considered to control a corporation. This rule applies for the purposes of determining whether a public foundation should be deregistered under paragraph 149.1(3)(*c*), or a private foundation should be deregistered under paragraph 149.1(4)(*c*) of the Act, where the foundation has acquired control of a corporation.

Paragraph 149.1(12)(*a*) is amended to delete its reference to paragraph 149.1(4)(*c*) of the Act, which no longer prohibits the acquisition of control of a corporation by a private foundation. This amendment is concurrent with the introduction of the excess corporate holdings regime for private foundations, generally applicable to taxation years commencing after March 19, 2007. However, private foundations subject to the transitional rule under subsection 149.2(8) of the Act will remain subject to existing paragraph 149.1(12)(*a*) until their transition is completed.

For more details, refer to the commentary to the definition "divestment obligation percentage" in subsection 149.1(1), as well as to the commentary to paragraph 149.1(4)(*c*) and subsection 149.2(8).

Information may be communicated

ITA
149.1(15)

Subsection 149.1(15) of the Act authorizes the Minister of National Revenue to communicate certain information in respect of charities, such as the prescribed information that is required to be contained in the information return for a taxation year that is mandated under subsection 149.1(14). Under the excess corporate holdings regime, this prescribed information will include the percentage of shares of the capital stock of a corporation held by a private foundation and relevant persons, in respect of all classes of shares of that corporation, if the foundation's holdings of one or more classes of shares of the corporation exceeds 2 per cent of the outstanding shares of that class at any time in the taxation year. Such a private foundation will also be required to report any material transactions during the year in respect of the corporation for any period during which the foundation held more than an insignificant interest in respect of any class of shares of the corporation (determined under subsection 149.2(1) of the Act). Specifically, the foundation will report any share transaction (or series of transactions) in respect of shares of the corporation that exceeds the lesser of $100,000 worth of shares of the class and 0.5 per cent of all outstanding shares of that class.

Subsection 149.1(15) is amended to add paragraph (*c*), requiring the Minister to disclose, if a private foundation that is a registered charity holds more than an insignificant interest in respect of a class of shares of the capital stock of a corporation,

- the name of the corporation;
- in respect of each class of shares of the corporation, the percentage holdings of those shares by the foundation; and
- the total of all holdings of shares of that class by relevant persons in respect of the private foundation (but not the names of such shareholders or their individual holdings, nor any material transactions reported by the foundation).

Also, to assist taxpayers in determining whether a donation of publicly-listed shares is eligible for a capital gains exemption under paragraph 38(*a.1*) of the Act, the Minister will provide any opinion as to whether a private foundation is, at a particular time, a non-qualifying private foundation.

For more details, refer to the commentary to the definition "non-qualifying private foundation" in subsection 149.1(1) and under section 149.2.

Clause 37

Excess corporate holdings of private foundations

ITA
149.2

New section 149.2 of the Act is introduced concurrently with amendments to sections 149.1 and 188.1 of the Act to establish an excess corporate holdings regime in respect of private foundations. Section 149.2 provides rules relating to the calculation of the divestment obligation percentages of a private foundation in respect of its excess holdings of the shares of the capital stock of a corporation. These amendments are concurrent with the introduction of the definitions "excess corporate holdings percentage" and "divestment obligation percentage" in subsection 149.1(1).

New section 149.2 applies to taxation years of private foundations that begin on or after March 19, 2007.

Material and insignificant interests

ITA
149.2(1)

New subsection 149.2(1) of the Act contains rules of interpretation that apply in respect of the excess corporate holdings regime for private foundations. If a relevant person in respect of a private foundation holds a material interest in respect of a class of share, that person's holdings are taken into consideration for the purpose of the calculation of the total corporate holdings percentage of the foundation and the reporting requirements of the foundation under subsection 149.1(14) of the Act.

New paragraph 149.2(1)(*a*) provides that a person has a material interest in respect of a class of shares of the capital stock of a corporation if the person holds more than $100,000 worth of the shares of that class or such holdings are more than 0.5 per cent of all the issued and outstanding shares of that class.

New paragraph 149.2(1)(*b*) provides that a foundation has an insignificant interest in respect of a class of shares of the capital stock of a corporation if the foundation holds 2 per cent or less of that class. If a foundation holds an insignificant interest in respect of a class of shares, the foundation is deemed to have no excess corporate holdings percentage in respect of that class. Furthermore, if at any time in a taxation year a private foundation holds more than an insignificant interest in respect of a class of shares, the foundation may be required, under the reporting requirements of subsection 149.1(14), to report its holdings of all shares of the corporation and those of any relevant person.

For more details regarding the definitions "excess corporate holdings percentage", "relevant person" and "total corporate holdings percentage", refer to the commentary for subsection 149.1(1).

Material transaction – anti-avoidance

ITA
149.2(2)

Subsection 188.1(3.1) of the Act imposes a penalty on a private foundation that fails to disclose a material transaction in the annual return that it is required to file under subsection 149.1(14) of the Act. New subsection 149.2(2) of the Act provides that if a private foundation or a relevant person in respect of the private foundation has engaged in a series of transactions, a purpose of which may reasonably be considered to be to avoid the application of the definition "material transaction" in subsection 149.1(1), each of those transactions or series of transactions is deemed to be a material transaction.

For more details regarding the definition "material transaction" and "relevant person", refer to the commentary for subsection 149.1(1).

Net increase in excess corporate holdings percentage

ITA
149.2(3)

New subsection 149.2(3) of the Act provides for the calculation of the net increase, if any, in the excess corporate holdings percentage of a private foundation for a taxation year, in respect of a class of shares of the capital stock of a corporation. The amount is calculated as the amount by which the excess corporate holdings percentage of the foundation at the end of the taxation year exceeds its excess corporate holdings percentage at the end of the preceding taxation year.

A net increase for a taxation year will give rise to a divestment obligation percentage of the private foundation for the current year or one of the five subsequent taxation years, allocated in accordance with subsection 149.2(5).

For more details regarding the definitions "divestment obligation percentage" and "excess corporate holdings percentage", refer to the commentary for subsection 149.1(1) of the Act.

Net decrease in excess corporate holdings percentage

ITA
149.2(4)

New subsection 149.2(4) of the Act provides for the calculation of the net decrease, if any, in the excess corporate holdings percentage of a private foundation for a taxation year, in respect of a class of shares of the capital stock of a corporation. The amount is calculated as the amount by which the excess corporate holdings percentage of the foundation at the end of the preceding taxation year exceeds its excess corporate holdings percentage at the end of the current taxation year.

A net decrease for a taxation year will reduce the divestment obligation percentage of the private foundation for the current year and any subsequent taxation years of the foundation, in chronological order, as provided for in subsection 149.2(7) of the Act.

For more details regarding the definitions "divestment obligation percentage" and "excess corporate holdings percentage", refer to the commentary for subsection 149.1(1) of the Act.

Allocation of net increase in excess corporate holdings percentage

ITA
149.2(5)

New subsection 149.2(5) of the Act applies for the purpose of calculating the divestment obligation percentage of a private foundation for a taxation year, in respect of a class of shares of the capital stock of a corporation. If a private foundation has, from the beginning of its current taxation year to its end, increased its "excess corporation holdings percentage" in respect of a class of shares, that increase will result in an obligation to divest itself of some of those shares within a specified period, to be determined under subsection 149.2(5) in accordance with the manner in which the foundation acquired shares of that class in the taxation year. The divestment obligation percentage for a taxation year, in respect of a class of shares, which is defined in subsection 149.1(1) of the Act, is effectively a "pool" of acquisitions of the current year or prior years.

A detailed description of this pooling mechanism is provided in the description of the definition "divestment obligation percentage" in subsection 149.1(1).

Minister's discretion

ITA
149.2(6)

New subsection 149.2(6) of the Act applies for the purpose of the allocation of a net increase to the excess corporate holdings percentage of a private foundation, under subsection 149.2(5), in respect of a class of shares of the capital stock of a corporation. Where it would be just and equitable to do so, subsection 149.2(6) provides that the Minister of National Revenue may defer the year to which a net increase will be allocated, upon application by the foundation. As such, the year for which a private foundation has a divestment obligation percentage in respect of an increase to the excess corporate holdings percentage of the foundation, normally allocated under subsection 149.2(5), may be deferred. For example, if a large donation were made to a foundation involving complex corporate structures or illiquid shares, the Minister could consider providing additional time for divestiture if the foundation could demonstrate that it had commenced disposition of the shares but that divestment could not occur more immediately because of securities regulations or without significantly depressing the price of the shares.

For more details regarding the definition "divestment obligation percentage" and "excess corporate holdings percentage", refer to the commentary for subsection 149.1(1) of the Act.

Allocation of net decrease in excess corporate holdings percentage

ITA
149.2(7)

New subsection 149.2(7) of the Act applies for the purpose of calculating the divestment obligation percentage of a private foundation for a taxation year, in respect of a class of shares of the capital stock of a corporation. If a private foundation has, from the beginning of its current taxation year to the end of the year, decreased its "excess corporation holdings percentage" in respect of a class of shares, that decrease will result in a reduction to the divestment obligation percentage of the foundation for the current or subsequent taxation years. Subsection 149.2(7) provides that the net decrease will be considered to apply first to reduce the divestment obligation percentage of the taxation year in which the reduction occurred. Any unapplied portion of the net decrease will decrease the divestment obligation percentage of subsequent taxation years in chronological order. If all such divestment obligation percentages have been satisfied, any remaining amount of the net decrease for the current year will expire.

For more details regarding the definition "divestment obligation percentage" and "excess corporate holdings percentage", refer to the commentary for subsection 149.1(1) of the Act.

Transitional rule

ITA
149.2(8)

New subsection 149.2(8) of the Act provides a transitional rule for the excess corporate holdings regime. The transitional rule applies to private foundations that had on March 18, 2007, an original corporate holdings percentage, in respect of a class of shares of the capital stock of a corporation, exceeding 20 per cent. Subsection 149.2(8) provides a private foundation with significant additional time (up to 20 years) to divest the excess holdings without being immediately subject to a penalty under new subsection 188.1(3.1) of the Act. To facilitate the application of this rule, a foundation should determine and report, in the information return for its first taxation year that begins on or after March 19, 2007, its original corporate holdings percentage, if any, in respect of a share class.

In general, a private foundation is to reduce the original corporate holdings percentage by 20 per cent every 5 years, beginning from the foundation's first taxation year commencing on or after March 19, 2007, until such holdings reach 20 per cent (after which the general excess corporate holdings rules will begin to apply). Alternatively, any relevant person could divest of their holdings of the class of shares. More specifically, for the purpose of calculating a foundation's excess corporate holdings percentage in respect of a class, the 20 per cent threshold for its first five taxation years will instead be equal to the original corporate holdings percentage. At the end of each of the next three 5-year periods, this threshold will be reduced by 20 per cent, until it has been reduced to the 20 per cent threshold that applies under the general rules.

In addition, within each 5-year period, the threshold that applies to a private foundation for a particular taxation year generally may not exceed its total corporate holdings percentage as at the end of its previous taxation year.

If, at the end of any taxation year a private foundation (together with relevant persons) has reduced its total corporate holdings in a class to 20 per cent or less, the transitional rule no longer applies.

In all other respects, the general rules for the excess corporate holdings regime apply. All donations and other acquisitions during the transitional period will be subject to the same rules for calculating increases and decreases to excess corporate holdings as would apply if the foundation were not eligible for transitional relief.

The reporting requirements under subsection 149.1(14) of the Act are not affected by the transitional rule under subsection 149.2(8) in respect of the divestment. For more details regarding these reporting requirements in respect of the excess corporate holdings regime for private foundations, refer to the commentary for subsection 149.1(15).

For more details regarding the definitions "divestment obligation percentage", "excess corporate holdings percentage", "original excess holdings percentage", "relevant person" and "total corporate holdings percentage", refer to the commentary for subsection 149.1(1).

Example 1 - Transitional Rule

Foundation X has a December 31 year-end. On March 18, 2007, Foundation X held 35% of the Class A shares in Corporation Z, and relevant persons held 50% of the Class A shares. In respect of all other corporate holdings, Foundation X either held an insignificant interest or had no excess corporate holdings percentage.

As the combined holdings of the foundation and relevant persons (35% +50%) were 85%, the "original excess holdings percentage" of the foundation was 85 per cent. Foundation X filed its 2008 information return and reported the original excess corporate holdings percentage, to which the transitional rules apply. As such, Foundation X (and the relevant persons) were required to reduce combined holdings to 65% within 5 years, to 45% within 10 years, to 25% within 15 years and to 20% within 20 years. There remained the option to reduce these combined holdings more rapidly.

During the 2009 taxation year of Foundation X, Corporation Z redeemed and cancelled 10% of the Class A shares, which had been held by an arm's length person (i.e. who was not a relevant person). Foundation X and the relevant persons therefore now owned 94% of the Class A shares that remained outstanding. This created a divestment obligation percentage for Foundation X for its second subsequent taxation year, 2011, equal to 9% (i.e. 94% less 85%).

In 2011, Foundation X sold 9% of the Class A shares to an arm's length person, thereby reducing its divestment obligation percentage for that year by 9%t.

For the 2013 taxation year of Foundation X, the 85% threshold was reduced to 65%. Because Foundation X had not made any further divestitures by the end of 2013, the reduction in the threshold resulted in a 20% net increase to its excess corporate holdings percentage for the 2013 taxation year. This net increase was allocated to the foundation's divestment obligation percentage for 2014. Foundation X divested 20% of the Class A shareholdings, in order to prevent being liable for a penalty under subsection 188.1(3.1) of the Act.

Example 2 - Transitional Rule

On March 18, 2007, Foundation Y held 25% of the issued and outstanding Class A shares in Corporation Z, and relevant persons held 30% of that class of shares. In addition, the foundation held 5% of the issued and outstanding Class B shares of Corporation M, and relevant persons held 25% of that class of shares. In respect of all other classes of shares of each corporation whose shares were held by the foundation, Foundation X had an excess corporate holdings percentage equal to 0%. Therefore, transitional rules apply only to these Class A and B shares in corporations Z and M respectively.

The combined holdings of the foundation and relevant persons (25% +30%) in Corporation Z give the foundation a transitional period of up to 10 years in respect of that corporation. To prevent liability for a penalty under subsection 188.1(3.1) of the Act, combined holdings in Corporation Z could be reduced to 35% or less within 5 years, and to 20% or less within 10 years. In the alternative, Foundation X could divest sufficiently so that its holdings in the Class A shares would be at 2% or less.

In respect of Corporation M, the original combined holdings were 30%, so the foundation was required to complete its divestment within 5 years. In the alternative, Foundation X could divest sufficiently so that its holdings in the Class B shares would be at 2% or less.

Clause 38

Assessment

ITA
152(1)(*b*)

Subsection 152(1) of the Act lists certain refunds and deemed payments on account of tax that are to be determined in the course of assessing a taxpayer's tax. Paragraph 152(1)(*b*) refers to the specific provisions under which amounts are deemed to be paid on account of tax. This paragraph is amended, for the 2007 and subsequent taxation years, to add a reference to new subsections 122.7(2) and (3). New subsections 122.7(2) and (3) deem an amount equal to an individual's WITB for a taxation year to have been paid on account of the individual's tax payable for that year. For more information on the WITB, please refer to the commentary to new section 122.7.

Reassessment with taxpayer's consent

ITA
152(4.2)(*b*)

Subsection 152(4.2) of the Act contains rules relating to the reassessment of tax, interest and penalties payable by a taxpayer and to the redetermination of tax deemed to have been paid by a taxpayer. Subsection 152(4.2) gives the Minister of National Revenue discretion to make a reassessment or a redetermination beyond the normal reassessment period when so requested by an individual or a testamentary trust. Paragraph 152(4.2)(*b*) refers to the specific provisions under which amounts are deemed to be paid on account of tax. This paragraph is amended, for the 2007 and subsequent taxation years, to add a reference to new subsections 122.7(2) and (3), which deem an amount equal to an individual's WITB for a taxation year to have been paid on account of the individual's tax payable for that year. For more information on the WITB, please refer to the commentary to new section 122.7.

Clause 39

Withholding obligation – exemption

ITA
153(1)

Subsection 153(1) of the Act imposes a withholding obligation on a person who pays certain amounts to another person. The detailed rules applicable for this purpose are found in the Regulations. With respect to certain amounts paid or payable to a non-resident person at any time during a taxation year, Regulation 105 requires the payor to withhold 15 per cent of the payment on account of the non-resident person's tax liability under Part I of the Act, unless an exemption applies.

Consequential to the introduction of new subsection 115(2.3), which provides for an income tax exemption in respect of certain amounts received or receivable in respect of the 2010 Olympic Winter Games or the 2010 Paralympic Winter Games, paragraphs 153(1)(*a*) and (*g*) are amended to add references to new subsection 115(2.3), thus providing an exemption from the withholding obligation for amounts to which new subsection 115(2.3) applies.

Clause 40

No instalment required

ITA
156.1

Section 156.1 of the Act relieves an individual from the obligation of making tax instalments where the individual's tax payable is below a certain threshold.

ITA
156.1(1)

Definitions

Subsection 156.1(1) of the Act sets out definitions that are relevant for the purpose of determining whether relief from tax instalments is available to individual taxpayers under subsection 156.1(2). The definition "instalment threshold" establishes the threshold at and below which an individual is relieved from making tax instalments. Paragraphs 156.1(1)(*a*) and (*b*) of the definition "instalment threshold" are amended to provide that for 2008 and subsequent taxation years of an individual, the exemption for an individual for a taxation year applies, if "net tax owing" for the year, or for each of the two preceding years, is less than or equal to $3,000 ($1,800 for Quebec residents). The previous amount was $2,000 ($1,200 for Quebec residents).

Clause 41

Instalment payments

ITA
157

Section 157 of the Act sets out the required payment dates for corporate income tax instalments and for any balance of corporate income tax payable. In general, a corporation is required to pay its tax liability for a taxation year in monthly instalments during the year. New subsection 157(1.1) allows small-Canadian-controlled private corporations (small-CCPCs) that meet the conditions set out in subsection 157(1.2) to pay their tax by quarterly instalments, instead of monthly.

Payment by corporations - monthly

ITA
157(1)

Subsection 157(1) of the Act specifies the amount and time for payment of a corporation's monthly tax instalments for a taxation year. Subsection 157(1) is amended in two respects. First, the preamble is amended to include a reference to new subsection 157(1.5), consequential to the introduction of quarterly instalments (instead of monthly) for certain small-CCPCs that meet the conditions set out in new subsection 157(1.2). Second, references in subparagraph 157(1)(*a*)(i) and paragraph 157(1)(*b*) to taxes payable by a corporation under Part I.3 (Tax on Large Corporations) of the Act are removed, as of 2006; corporations are no longer required to pay tax under that Part. The amendments to subsection 157(1) apply to taxation years that begin after 2007.

Payment by small-CCPC – quarterly instalments

ITA
157(1.1)

New subsection 157(1.1) of the Act allows small-CCPCs that meet the conditions set out in new subsection 157(1.2) to pay their annual tax liability by quarterly instalments instead of monthly. For this purpose, a quarterly instalment period is a period that does not exceed a three-month period in a taxation year of a corporation. Cooperative corporations and credit union corporations are deemed not to be CCPCs by subsections 136(1) and 137(7) respectively. However those subsections do not apply for the purpose of section 157. Therefore, where a cooperative corporation or a credit union corporation qualifies as a small-CCPC under new subsection 157(1.2), it will be entitled to pay its tax instalments quarterly instead of monthly.

Paragraph 157(1.1)(*a*) sets out the amounts and dates for the quarterly instalments of a small-CCPC. Paragraph 157(1.1)(*b*) provides that the balance of taxes under Parts I and VI.1 are due on the corporation's balance-due day as defined in subsection 248(1), which generally in the case of a small-CCPC is three months after the corporation's taxation year-end.

Based on subparagraphs 157(1.1)(*a*)(i), (ii) and (iii) the amount of quarterly instalments can be any of the following three amounts:

- four instalments equal to 1⁄4 of the estimated tax payable for the current taxation year;
- four instalments equal to 1⁄4 of the tax payable for the previous taxation year; or
- a first instalment equal to 1⁄4 of the tax payable for the second preceding year, with the remaining three instalments being equal to 1⁄3 of the amount, if any, by which the tax payable for the previous taxation year exceeds the first instalment paid for the current taxation year.

Quarterly instalments are due on the last day of each quarter of the corporation's taxation year. Quarterly instalments will be available for small-CCPCs in respect of taxation years that begin after 2007.

Small-CCPC

ITA
157(1.2)

New subsection 157(1.2) of the Act sets out the conditions that a corporation must meet in order to be a small-CCPC and then to be eligible to pay its annual tax liability by quarterly instalments, instead of monthly.

- Paragraph 157(1.2)(*a*) requires that the corporation's taxable income, determined under subsection 157(1.3) which includes the taxable income of associated corporations, cannot be more than $400,000 either in the preceding taxation year or in the current taxation year.
- Paragraph 157(1.2)(*b*) requires that the corporation's taxable capital employed in Canada, determined under subsection 157(1.4) which includes the taxable capital employed in Canada of associated corporations, cannot be more than $10 million, either in the preceding taxation year or in the current taxation year.
- Paragraph 157(1.2)(*c*) requires that the corporation be a corporation that claimed a small business deduction under section 125 in computing its tax payable either in the preceding taxation year or in the current taxation year.
- Paragraph 157(1.2)(*d*) requires that the corporation have fulfilled various reporting and remittance obligations.

Taxable income threshold for a small-CCPC

ITA
157(1.3)

New subsection 157(1.3) of the Act ensures that the reference to the amount in paragraph 157(1.2)(*a*) is, if a corporation is associated with other corporations, a reference to the total of the taxable incomes of the group of associated corporations. Subsection 157(1.3) applies to taxation years that begin after 2007.

Taxable capital threshold for a small-CCPC

ITA
157(1.4)

New subsection 157(1.4) of the Act ensures that the reference to the amount in paragraph 157(1.2)(*b*) is, if a corporation is associated with other corporations, a reference to the sum of taxable capital employed in Canada (as that term is defined in section 181.2) by each corporation in the group of associated corporations.

Payment by corporation - ceased to be a small-CCPC

ITA
157(1.5)

New subsection 157(1.5) of the Act sets out the required payment amounts and dates for corporate income tax instalments and for any balance of corporate income tax payable, in a situation where a corporation no longer qualifies as a small-CCPC at any time during a taxation year. Subsection 157(1.5) applies to taxation years that begin after 2007.

A small-CCPC is entitled to pay tax instalments at the end of each quarter in a taxation year, and must pay the balance of its tax payable on its balance-due day. If at any particular time during the taxation year, such a corporation no longer meets the conditions set out in new subsection 157(1.2) to qualify as a small-CCPC, then the corporation will still be allowed to pay its next instalment due at the end of the current quarter. However, the corporation will have to begin to pay monthly tax instalment following that quarter.

It should be noted that a small-CCPC is not required to pay Part VI or XIII.1 tax; however, if a corporation ceases to qualify as a small-CCPC during the year, the corporation may be liable for taxes under those Parts for the year.

Subparagraphs 157(1.5)(*a*)(i) and (ii) set out the amount of monthly payments for the reminder of the taxation year that are required to be paid by the corporation after the current quarter. The corporation may chose to pay either of the following amounts as monthly instalments for the reminder of the year:

- An amount obtained when the total of the estimated taxes payable by the corporation for the taxation year under Parts I, VI, VI.1 and XIII.1 for the taxation year, less the total of all quarterly instalments payments payable by the corporation for the year until the end of the current quarter, is divided by the number of months remaining in the year after the end of the current quarter, or
- An amount obtained when the sum of the corporation's first instalment base for the taxation year (as that term is defined in section 5301 of the Regulations), and the total of estimated taxes payable by the corporation for the taxation year under Parts VI and XIII.1 for the taxation year, less the total of all quarterly instalments payments payable by the corporation for the year until the end of the current quarter, is divided by the number of months remaining in the year after the end of the current quarter.

Paragraph 157(1.5)(*b*) ensures that the corporation's balance of tax payable for a taxation year is due on the corporation's "balance-due day" (as that term is defined in subsection 248(1)).

Subsection 157(1.5) applies to taxation years that begin after 2007.

$3,000 Threshold

ITA
157(2.1)

Subsection 157(2.1) of the Act is rewritten and amended in two respect. First, the reference to $1,000 is changed to $3,000 to provide that where a corporation's tax payable under Parts I, VI, VI.1 and XIII.1 or its first instalment base for the year is less than $3,000, the corporation is exempt from the requirement to make instalment payments. Second, the reference to Part I.3 of the Act is removed, as of 2006; corporations are no longer required to pay tax under that Part. This change applies to taxation years that begin after 2007.

Reduced instalments - monthly

ITA
157(3)

Consequential to the introduction of the quarterly instalments for small-CCPC's and new subsections 157(1.1), (1.3) and (1.5), subsection 157(3) is amended to clarify that the subsection applies only to corporations that pay their annual tax liability by monthly instalments, as required under subsection 157(1) or (1.5). This amendment applies to taxation years that begin after 2007.

Reduced instalments – three month period

ITA
157(3.1)

New subsection 157(3.1) of the Act applies for the purpose of new subsection 157(1.1). Subsection 157(3.1), which applies to taxation years that begin after 2007, allows small-CCPCs to reduce each quarterly instalment by 1/4 of the amount of certain tax refunds. Paragraphs 157(3.1)(*b*) and (*c*) list these certain tax refund amounts.

Paragraph 157(3.1)(*a*) establishes the amount otherwise payable under subsection 157(1.1).

Paragraph 157(3.1)(*b*) allows a small-CCPC to reduce its quarterly payment by 1/4 of the corporation's dividend refund as determined under section 129.

Paragraph 157(3.1)(*c*) allows a small-CCPC to reduce its quarterly payment by 1/4 of any amounts which are deemed by subsections 125.4(3), 125.5(3), 127.1(1) and 127.41(3) to have been paid on account of the small-CCPC's tax payable under Part I for the year. These subsections, respectively, describe: Canadian film or video production tax credits, film or video production services tax credits, refundable investment tax credits and Part XII.4 tax credits (tax on qualifying environmental trusts).

Clause 42

Limitations – corporations

ITA
161(4.1)

Subsection 161(4.1) of the Act is rewritten and amended consequential to the introduction of new quarterly instalments for small-CCPC's and subsection 157(1.1) to (1.5). This amendment applies to taxation years that begin after 2007.

Clause 43

False statements or omissions

ITA
163(2)(*c.3*)

Subsection 163(2) of the Act imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement or omission. This subsection is amended, applicable to the 2007 and subsequent taxation years, to add new paragraph 163(2)(*c.3*). This new paragraph is added as a consequence of the introduction of the WITB in new section 122.7. Paragraph 163(2)(*c.3*) is intended to ensure that the penalty is imposed where a false statement or an omission is made in connection with the WITB.

Clause 44

Tobacco manufacturers' surtax – definitions

ITA
182(2)

Subsection 182(2) sets out a number of definitions that apply for the purpose of the tobacco manufacturers' surtax. The amendments to the subsection apply to taxation years that end after 2006.

"tobacco manufacturing"

The activity of farming is currently excluded from the definition "tobacco manufacturing". The definition is amended to exclude any exempt activity. Please refer to the commentary to the new definition "exempt activity" for further details.

"exempt activity"

Subsection 182(2) of the Act is also amended to add the new definition "exempt activity". For the purposes of the tobacco manufacturers' surtax, an exempt activity is excluded from being tobacco manufacturing. An exempt activity is defined to mean farming or leaf tobacco processing. In the case of leaf tobacco processing, it must also be the case that

(i) the activity is done by and is the principal business of the particular corporation,

(ii) the particular corporation does not manufacture any tobacco product, and

(iii) the particular corporation is not related to any other corporation that carries on tobacco manufacturing.

Clause 45

Exemption from Part IV tax

ITA
186.1(*b*)(vii)

Section 186.1 of the Act exempts certain corporations from tax under Part IV of the Act. The reference in subparagraph 186.1(*b*)(vii) to a registered securities dealer that was a "member" of a prescribed stock exchange in Canada is updated to refer to both a "member" and a "participating organization" of a prescribed stock exchange, effective after April 2, 2000. The timing of this amendment takes into account the demutualization of the Toronto Stock Exchange as of April 3, 2000, in which "member firms" of the exchange were converted into "participating organizations".

The subparagraph is also amended by replacing the reference to "prescribed stock exchange" with a reference to the new category of "designated stock exchange", as explained in more detail under the notes to new section 262. This amendment, which applies on and after the day on which the amending bill receives Royal Assent, merely updates the language of the provision and is not intended to alter its substantive effect.

Clause 46

Penalty for excess corporate holdings

ITA
188.1(3.1)

Section 188.1 of the Act generally provides for penalties for breaches of the Act by charities that may be more appropriate in certain circumstances than would be revocation of registered status. New subsection 188.1(3.1) provides for the imposition of a penalty on a private foundation in the event that it has, at the end of a taxation year, not reduced to zero per cent its divestment obligation percentage for that year in respect of a class of shares of the capital stock of a corporation.

As with other intermediate sanctions, repeated or uncorrected infractions of the excess corporate holdings rules may result in revocation of a foundation's registration.

If a private foundation has, at the end of the taxation year, an outstanding divestment obligation percentage for that year, in respect of a class of shares, the foundation is liable to an initial penalty of 5 per cent of the fair market value of the shares represented by that divestment obligation percentage. The penalty is calculated based on the shareholdings as of the date of the end of the compliance period, but the penalty is not payable until assessed by the Canada Revenue Agency. The penalty is doubled, to 10 per cent, in either of the following circumstances:

- the foundation was assessed a 5 per cent penalty less than five years before the end of the taxation year in respect of any class of shares of the capital stock of any corporation; or
- the foundation has failed to disclose, in its return required under subsection 149.1(14) for the taxation year
    - a material transaction, in the taxation year, of the private foundation in respect of the class,
    - a material interest held at the end of the taxation year by a relevant person in respect of the private foundation, or
    - the total corporate holdings percentage of the private foundation in respect of the class at the end of the taxation year, unless at no time in the taxation year the private foundation held greater than an insignificant interest in respect of the class.

Where the amount of penalties assessed under section 188.1 for a taxation year, including any penalties under new subsection 188.1(3.1), exceed $1,000, a foundation is permitted to satisfy its liability by transferring amounts owing to eligible donees. As provided for in subsection 188(1.3), an eligible donee generally refers to an unrelated charity that is not under suspension from issuing official tax receipts, that has filed all information returns and that has no unpaid liabilities under the Act or the *Excise Tax Act*. This measure ensures that funds raised by a foundation may continue to be applied for charitable purposes.

For more details regarding the definitions "divestment obligation percentage", "material transaction", "relevant person" and "total corporate holdings percentage", refer to the commentary for subsection 149.1(1). Regarding the interpretation of the term "material interest", refer to the commentary for subsection 149.2(1).

Subsection 188(3.1) applies on Royal Assent.

Avoidance of divestiture

ITA
188.1(3.2)

New subsection 188.1(3.2) of the Act applies if a private foundation or a relevant person in respect of the foundation has engaged in a transaction or series of transactions, the result of which is that the foundation holds, directly or indirectly, an interest or right in a corporation other than shares, and the purpose of which was to avoid the application of a penalty under subsection 188.1(3.1) regarding a divestment obligation percentage in respect of those shares, by substituting shares of the class with that interest or right. The effect of subsection 188.1(3.2) is that, for the purpose of applying the excess corporate holdings rules in subsection 149.1(1) and section 149.2, in general, each of those interests or rights is deemed to have been converted into a number of shares of that class that would correspond in value to the value of the interest or right. As such, those "notional" shares will be included in calculating various percentages provided for in subsection 149.1(1), and the fair market value of such interests and rights will be included in calculating any penalty that may apply under subsection 188.1(3.1).

For more details regarding the definitions "divestment obligation percentage" and "relevant person", refer to the commentary for subsection 149.1(1).

Subsection 188(3.2) applies on Royal Assent.

Clause 47

"qualified investment"

ITA
204

Section 204 of the Act sets out definitions for the purposes of Part X of the Act. These definitions include "qualified investment". In its current form, the definition "qualified investment" refers to obligations described in clause 212(1)(*b*)(ii)(C). Concurrent with anticipated changes to the tax treaty between Canada and the United States, paragraph 212(1)(*b*) is being substantially revised, and this reference will no longer be valid. This amendment therefore replaces that reference with a reference to obligations described in paragraph (*a*) of the new definition "fully exempt interest" in subsection 212(3). For additional information, readers may consult the notes to that definition.

To coincide with the revision of paragraph 212(1)(*b*), this consequential amendment applies on and after the first day, if any, on which a tax treaty between Canada and the United States generally precludes Canada from taxing amounts of interest paid by persons resident in Canada to persons resident in the United States with whom the payers deal at arm's length.

The language of paragraphs (*c*) and (*d*) of the definition "qualified investment" is also updated consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 55 for more information.

Clause 48

Non-residents' Canadian-source interest income

ITA
212

Part XIII of the Act, and specifically section 212, imposes a tax, commonly known as "non-resident withholding tax" on certain payments by residents of Canada to non-residents.

ITA
212(1)(*b*)

The payments that are taxable under Part XIII include some forms of interest. Paragraph 212(1)(*b*) is currently structured to apply the tax to interest payments other than those set out in a series of subparagraphs.

In a significant revision of the non-resident withholding tax, paragraph 212(1)(*b*) is amended. The new provision will exempt from the tax any interest payments that a payer resident in Canada makes to a non-resident recipient with whom the payer deals at arm's length, other than those payments ("participating debt interest") that are in effect a distribution of profits or the like. As well, interest on certain debt obligations ("fully exempt interest") will be exempt even if it is paid to a non-arm's length person or might be considered participating debt interest. This retains an important aspect of the current rule.

This fundamental change to paragraph 212(1)(*b*) is meant to coincide with anticipated changes to the tax treaty between Canada and the United States. In short, once the Canada-U.S. tax treaty precludes the U.S. from taxing arm's length interest payments to residents of Canada, and precludes Canada from taxing such payments to U.S. residents, Canada will also generally refrain from taxing payments of arm's length interest to residents of other countries.

The amendment of paragraph 212(1)(*b*) to effect this general exemption is found in subclause (2) of this clause; the definitions of "fully exempt interest" and "participating debt interest" are in subclause (3); and subclauses (4) and (5) set out consequential amendments to other portions of section 212. Each of these is briefly described below.

Subclause (1) provides a special interim measure. Under existing subparagraph 212(1)*(b)*(vii), interest paid by a corporation resident in Canada on arm's length medium- and long-term corporate debt is, provided certain conditions are met, exempt from the section 212 tax. One key condition is, broadly, that the borrowing corporation must not under any circumstances (other than in some specific exceptional cases) be required to repay more than 25 per cent of the principal amount within five years from the date the debt was issued.

The specific exceptions under which early repayment can be provided for do not, as it happens, include the legislated removal of the tax itself. This is significant because a Canadian-resident corporation and a non-resident lender might wish to structure a current borrowing in the expectation of being able to take advantage in the future of the new Canada-U.S. tax treaty rule (if the lender is in the U.S.), or the amendment to paragraph 212(1)*(b)* (if the lender is elsewhere). To accommodate this possibility, subclause (1) adds to the list of circumstances in which the terms of a debt (or an agreement relating to it) may require the borrower to repay. The addition, new clause 212(1)*(b)*(vii)(G), refers to early repayment in the event that a change to the Act or a tax treaty relieves the lender from liability under Part XIII in respect of the interest. The new clause applies to obligations entered into on or after March 19, 2007.

Once the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest, subclause (2)'s fully amended version of paragraph 212(1)*(b)* will come into effect. This provides that non-resident persons are taxable on any amounts of interest (other than fully exempt interest) they receive from non-arm's length persons resident in Canada, as well as on participating debt interest. In other cases, no tax under subsection 212(1) is payable on the interest.

ITA
212(3)

Existing subsection 212(3) of the Act sets out special rules that affect the application of paragraph 212(1)*(b)*(vii). Those rules will no longer be required, and subsection 212(3) can instead set out the new definitions "fully exempt interest" and "participating debt interest".

"Fully exempt interest" is interest, paid by a person resident in Canada to a non-resident person, that – provided it is not "participating debt interest" – is exempt from tax under paragraph 212(1)*(b)* even if the payer and the recipient do not deal at arm's length. In brief, fully exempt interest includes interest paid: on government and quasi-government debt; on foreign real property mortgages (except where the interest is deductible in Canada); to prescribed international organizations; and under certain securities lending arrangements. The definition thus essentially replicates existing subparagraphs 212(1)*(b)*(ii), (viii), (x) and (xii).

"Participating debt interest" is, very generally speaking, interest that depends on the success of the payer's business or investments. In its details, the definition draws directly from the concluding portion (the postamble) of existing paragraph 212(1)*(b)*, and it is intended to have the same effect.

The new definitions in subsection 212(3) will apply when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

ITA
212(14)

Current subparagraph 212(1)*(b)*(iv) of the Act exempts from tax under Part XIII payments of interest to non-resident persons who hold "certificates of exemption" issued under subsection 212(14) and who deal at arm's length with the payer of the interest. With the general exemption of all interest paid by persons in Canada to arm's length non-residents, these certificates will no longer be necessary, and subsection 212(14) is repealed. This measure will apply when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

ITA
212(18)

Subsection 212(18) of the Act provides two special rules that apply to prescribed financial institutions and Canadian-resident registered securities dealers. The first rule requires the filing of a special return in relation to interest paid to non-resident persons, if the payer has, relying on particular exemptions in paragraph 212(1)*(b)*, not withheld tax from the payments. With the broadening of the exemptions in that paragraph, this requirement is less relevant and is repealed.

The second rule is retained in amended subsection 212(18), which will take effect at the same time as the other amendments. This obligates the financial institutions and securities dealers to provide undertakings in relation to the avoidance of tax under Part XIII, if the Minister of National Revenue requires them to do so.

Amended subsection 212(18) will apply once the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

ITA
212(19) and (20)

Subsection 212(19) of the Act sets out a tax that applies to registered securities dealers resident in Canada. As a consequence of changes to paragraph 212(1)*(b)*, the references in subsection 212(19) to certain portions of that paragraph will no longer be correct. The subsection is modified accordingly.

One of the references in question is to "a securities lending arrangement described in subparagraph (1)*(b)*(xii)." Since that subparagraph will no longer exist, this is replaced with a reference to "a designated securities lending arrangement." New subsection 212(20) defines such an arrangement, using a slightly altered version of the text of current subparagraph 212(1)*(b)*(xii).

The amendments to subsections 212(19) and new subsection 212(20) will apply when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

Payments to International Olympic Committee and the International Paralympic Committee

ITA
212(17.1)

Section 212 of the Act, in Part XIII, provides that certain payments that a non-resident person receives from a person resident in Canada are taxable in Canada. The tax is collected through a requirement that the person making the payment withhold and remit an amount on account of that tax. The rate at which this withholding is required is generally 25 per cent, although this rate is often reduced by tax treaties.

Subsection 212(17.1) is added to provide an exemption from withholding under Part XIII with respect to certain amounts that are paid or credited to the International Olympic Committee (IOC) or the International Paralympic Committee (IPC). The exemption applies only to amounts that the IOC or the IPC receives after 2005 and before 2011 in respect of the 2010 Olympic Winter Games or the 2010 Paralympic Winter Games, respectively.

Clause 49

Part XIII rules

ITA
214(8) and (11)

Section 214 of the Act sets out a number of rules in relation to the tax imposed by Part XIII of the Act on the Canadian-source income of non-resident persons. One of these, subsection 214(7), applies where certain debt obligations are assigned or transferred by a non-resident person to a person resident in Canada. That subsection treats as interest, and therefore as potentially subject to tax under paragraph 212(1)(*b*), a portion of the amount for which the obligation was assigned or transferred. Some obligations are excluded from this rule; and subsection 214(8) defines "excluded obligation" for this purpose. Subsection 214(8) relies for this purpose on certain subparagraphs of paragraph 212(1)(*b*). Since those citations will no longer be correct, subsection 214(8) is amended, with application when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

As drafted, the amendment to subsection 214(8) refers to "subparagraph 212(1)(*b*)(iii) or (vii) as they applied to the 2007 taxation year". This approach has been taken in order to preserve the effect of the subsection for the immediate future without unduly complicating it, pending a more comprehensive examination of the rules in section 214 in the light of the changes to paragraph 212(1)(*b*).

Subsection 214(11) provides a special reading of subparagraph 212(1)(*b*) in respect of certain deemed payments of interest by "non-resident-owned investment corporations" (NROs). The subsection is repealed, as the end of the special tax regime for NROs makes it unnecessary.

These amendments will apply when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

Clause 50

Administration

ITA
220

Section 220 of the Act sets out a number of rules relating to the administration and enforcement of the Act.

Joint election – pension income split

ITA
220(3.201)

New subsection 220(3.201) of the Act provides that the Minister of National Revenue may – where the Minister considers it just and equitable – extend the time for making, revoking or amending a joint election to split pension income under section 60.03 provided the request is made by a taxpayer resident in Canada and is made within 3 calendar years of the filing-due date for the year in which the election applies.

Any request to the Minister to permit a late, amended or revoked election must be made in writing and jointly by the taxpayer and the taxpayer's spouse or common-law partner. In order to obtain such an extension, revocation, or amendment the taxpayer will have to demonstrate that the failure to file the election on time was beyond the taxpayer's control and would cause unintended tax consequences.

New subsection 220(3.201) applies to the 2007 and subsequent taxation years.

Penalty for late filed, amended or revoked elections

ITA
220(3.5)

Subsection 220(3.5) of the Act provides that where the Minister of National Revenue permits a late, amended or revoked election, the applicant is liable to a penalty.

This subsection is amended to exclude elections under new subsection 220(3.201).

This amendment applies to the 2007 and subsequent taxation years.

Clause 51

Where taxpayer information may be disclosed

ITA
241(4)(*q*)

Subsection 241(4) of the Act authorizes the communication of taxpayer information to government officials, outside the Canada Revenue Agency, for limited purposes. Subsection 241(4) is amended, applicable on Royal Assent, to add new paragraph 241(4)(*q*), which provides for the disclosure of taxpayer information to an official of the government of a province solely for use in the management or administration by that government of a program relating to earning supplementation or income support.

Clause 52

Definitions

ITA
248(1)

Subsection 248(1) of the Act defines various terms for the purposes of the Act.

"designated stock exchange"

Subsection 248(1) of the Act is amended by adding the new definition "designated stock exchange", as explained in more detail under the notes to new section 262. A designated stock exchange is a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under section 262 is in effect. The definition applies on and after the day on which the amending bill receives Royal Assent.

"functional currency"

Subsection 248(1) is amended to add the new definition "functional currency". Functional currency is defined as having the meaning assigned by subsection 261.

"recognized stock exchange"

Subsection 248(1) of the Act is amended by adding the new definition "recognized stock exchange". A recognized stock exchange is any stock exchange located in Canada or in a member country of the Organisation for Economic Co-operation and Development (OECD) that has a tax treaty with Canada. A designated stock exchange is also a "recognized stock exchange" (regardless of where it is located). The definition applies on and after the day on which the amending bill receives Royal Assent.

Rule re part of a stock exchange

ITA
248(29)

Subsection 248(29) of the Act provides a rule relating to a part, division, or subdivision of a stock exchange. The subsection is repealed, effective upon Royal Assent of the amending bill, consequential to the new definition of "designated stock exchange" under subsection 248(1) and new section 262, which render this subsection unnecessary.

Clause 53

Replacement of "prescribed stock exchange" by "stock exchange" – securities lending arrangements

ITA
260(1)

Subsection 260(1) of the Act provides certain definitions that apply for the purposes of the securities lending rules under the Act. The definitions "qualified security" and "qualified trust unit" currently apply only to certain securities listed on a prescribed stock exchange. The definitions are amended, applicable on and after the day on which the amending bill receives Royal Assent, to replace each reference to "prescribed stock exchange" with a reference to "stock exchange". The term "stock exchange", which is intended to include any stock exchange located anywhere in the world, including all designated stock exchanges and all recognized stock exchanges, is not defined – the generally accepted legal and commercial meaning of the term is intended to apply.

ITA
260(8)

Subsection 260(8) of the Act applies special rules, for the purposes of Part XIII of the Act, to certain "compensation payments" made under securities lending arrangements (SLAs). In its current form, the subsection refers to particular subparagraphs of paragraph 212(1)(*b*). With the restructuring of that paragraph, those references will no longer operate as intended. They are therefore amended.

Given the complexity of SLAs and the tax rules that apply to them, these amendments are described here only briefly.

The first reference is in subparagraph 260(8)(*a*)(ii), and is to subparagraph 212(1)(*b*)(vii). This specific citation is removed, with the result that the effect of subparagraph 260(8)(*a*)(ii) is broadened: for all purposes of Part XIII, the compensation payments in question will be treated as having been payable by the issuer of the security that was the subject of the securities lending arrangement.

The second reference is to a security described in existing subparagraph 212(1)(*b*)(ii). This is replaced, with no change in its effect, with a reference to the corresponding paragraph of the new subsection 212(3) definition "fully exempt security".

These amendments will apply when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

Clause 54

Functional currency reporting and authority to designate stock exchange

ITA
261 and 262

Functional currency reporting

ITA
261

New section 261 of the Act confirms that, as a general rule, all amounts required to be determined under the provisions of the Act are determined in Canadian currency. It also provides, where certain conditions are met, an exception to this requirement. If the conditions are met, a Canadian corporation will be permitted to determine its Canadian tax results in the corporation's functional currency. Except where otherwise indicated, these amendments apply to taxation years that begin on or after the bill enacting these provisions is assented to.

Definitions

ITA
261(1)

New subsection 261(1) defines certain terms used in section 261.

"Canadian currency year"

The definition "Canadian currency year" is relevant to various definitions in subsection 261(1) and various other subsections in section 261. A Canadian currency year of a taxpayer is defined as a taxation year of the taxpayer in respect of which subsection 261(4) did not apply to the taxpayer.

"Canadian tax results"

The definition "Canadian tax results" is relevant for the application of subsections 261(2), (4), (5) and (9) of the Act. The Canadian tax results of a taxpayer for a particular taxation year are:

- the income of the taxpayer for the particular taxation year,
- the taxable income of the taxpayer for the particular taxation year,
- the amount (other than an amount payable on behalf of another person under subsection 153(1) or section 215) of tax or other amount payable under the Act by the taxpayer in respect of the particular taxation year,
- the amount (other than an amount refundable on behalf of another person in respect of amounts payable on behalf of that person under subsection 153(1) or section 215) of tax or other amount refundable under the Act to the taxpayer in respect of the particular taxation year, and
- any amount relevant in determining any of the amounts described above.

The definition "Canadian tax results" is applicable to all taxation years.

"consolidated financial statements"

The definition "consolidated financial statements" is relevant to the definition "functional currency" in subsection 261(1) of the Act. The consolidated financial statements of a taxpayer are the financial statements of the taxpayer, prepared in accordance with generally accepted accounting principles.

"currency exchange rate"

The definition "currency exchange rate" is relevant for the purposes of new subsections 261(4), (5), (6), (7) and (10) of the Act. The currency exchange rate on a particular day is, in respect of a conversion of an amount determined in a particular currency into an amount determined in another currency, the average, for the 12 month period ending on the particular day,

- where the particular currency is Canadian currency, of the rate of exchange (calculated by reference to the rate of exchange quoted by the Bank of Canada at noon on each business day in the period) for the exchange of the Canadian dollar for a unit of the other currency or such rate or rates of exchange acceptable to the Minister of National Revenue,
- where the other currency is Canadian currency, of the rate of exchange (quoted by the Bank of Canada at noon on each business day in the period) for the exchange of a unit of the particular currency for the Canadian dollar or such rate or rates of exchange acceptable to the Minister, or
- where neither the particular currency nor the other currency is Canadian currency, of the rate of exchange (calculated by reference to the rates of exchange quoted by the Bank of Canada at noon on each business day in the period for the exchange of the Canadian dollar for a unit of each of those currencies) for the exchange of a unit of the particular currency for a unit of the other currency or such rate or rates of exchange acceptable to the Minister.

"functional currency"

The definition "functional currency" is relevant for the purposes of various subsections in proposed section 261 of the Act. The functional currency of a taxpayer for a particular year of the taxpayer is the currency that is

- a qualifying currency,
- used, more often than any other currency, in the conduct of the taxpayer's principal business activities in the particular taxation year, and
- used in computing the taxpayer's financial results in the taxpayer's consolidated and legal-entity financial statements.

"functional currency year"

The definition "functional currency year" of a taxpayer is relevant to various definitions in subsection 261(1) of the Act and various subsections in proposed section 261. A functional currency year of a taxpayer is a taxation year of the taxpayer in respect of which subsection 261(4) applies to the taxpayer.

"generally accepted accounting principles"

The definition "generally accepted accounting principles" is relevant to the definitions "consolidated financial statements", "functional currency" and "legal-entity financial statements" in new subsection 261(1) of the Act. Generally accepted accounting principles are the accounting principles established or recommended by the Accounting Standards Board of Canada or such other accounting principles as are determined to be acceptable by the Minister of National Revenue.

"initial functional currency year"

The definition "initial functional currency year" is relevant to the application of the definitions "last Canadian currency year" and "transitional exchange rate" in proposed subsection 261(1) of the Act and proposed subsections 261(5), (6) and (10). An initial functional currency year of a taxpayer is a functional currency year of the taxpayer that immediately follows a Canadian currency year of the taxpayer.

“initial reversionary year”

The definition “initial reversionary year” is relevant to the application of proposed subsection 261(9) and (10) of the Act. An initial reversionary year of a taxpayer is the taxation year of the taxpayer that begins immediately after the last functional currency year of the taxpayer.

“last Canadian currency year”

The definition “last Canadian currency year” is relevant to the definition “transitional exchange rate” in proposed subsection 261(1) of the Act and proposed subsections 261(5) and (6). The last Canadian currency year of a taxpayer is the last taxation year of the taxpayer that ends before the beginning of the initial functional currency year of the taxpayer.

“last functional currency year”

The definition “last functional currency year” is relevant to the definition “initial reversionary year” in proposed subsection 261(1) of the Act and proposed subsections 261(8), (9), (12), (14), (16) and (17). The last functional currency year of a taxpayer is a functional currency year that immediately precedes a Canadian currency year of the taxpayer.

“legal-entity financial statements”

The definition “legal-entity financial statements” is relevant to the definition “functional currency” in proposed subsection 261(1) of the Act. Legal-entity financial statements of a taxpayer for a taxation year are the financial statements of the taxpayer that would be prepared for that taxation year in accordance with generally accepted accounting principles for that taxation year if those generally accepted accounting principles did not require consolidation.

“qualifying currency”

The definition “qualifying currency” is relevant to the definition “functional currency” in proposed subsection 261(1) of the Act. Qualifying currency of a taxpayer for a taxation year is:

- the currency of the United States of America,
- the currency of the European Monetary Union,
- the currency of the United Kingdom, and
- a prescribed currency.

“reversionary exchange rate”

The definition “reversionary exchange rate” is relevant to the application of proposed subsection 261(9) of the Act. Reversionary exchange rate of a taxpayer for a particular foreign currency year of the taxpayer is the average, for the 12 month period ending on the last day of the particular functional currency year of the taxpayer, of the rate of exchange (calculated by reference to the rate quoted by the Bank of Canada at noon on each business day in the period) for the exchange of the unit of currency that is the taxpayer’s functional currency for the Canadian dollar.

“tax credit”

The definition “tax credit” is relevant to the application of proposed subsection 261(10) of the Act. Tax credit means an amount deductible in computing a taxpayer’s tax payable, or deemed to have been paid on account of a taxpayer’s tax payable, under any Part of the Act for a taxation year.

"transitional exchange rate"

The definition "transitional exchange rate" is relevant to proposed subsections 261(5) and (6) of the Act. The transitional exchange rate of a taxpayer is the average, for the 12-month period ending on the last day of the last Canadian currency year of the taxpayer, of the rate of exchange (calculated by reference to the rate quoted by the Bank of Canada at noon on each business day in the period) for the exchange of the Canadian dollar for the unit of currency that is the functional currency of the taxpayer.

Canadian currency requirement

ITA
261(2)

New subsection 261(2) of the Act confirms that, in determining any amount under the provisions of the Act, each amount is to be determined in Canadian currency. Subsection (2) also confirms that a particular amount that is relevant in computing the taxpayer's Canadian tax results and that is expressed in a currency other than Canadian currency on a day in a particular taxation year is, subject to subsection 79(7), paragraph 80(2)(*k*) and paragraph 142.7(8)*(b)*, to be converted into Canadian currency using the rate of exchange (calculated by reference to the rate quoted by the Bank of Canada at noon on that day) on that day for the exchange of a unit of that other currency for a unit of Canadian currency, or such other rate as is acceptable to the Minister of National Renvenue. Subsection (2) is subject to subsections 261(3) to (10).

Proposed subsection 261(2) is applicable to all taxation years.

Application of subsection 261(4)

ITA
261(3)

New subsection 261(3) of the Act provides the conditions that must be met before a taxpayer can compute the taxpayer's Canadian tax results for a particular taxation year using the taxpayer's functional currency for the particular taxation year. This new subsection provides that subsection 261(4) will apply to a taxpayer for a taxation year where the following conditions are met:

- the taxpayer must be, throughout the particular taxation year, a corporation (other than an investment corporation, a mortgage investment corporation or a mutual fund corporation) resident in Canada,
- the taxpayer elects that subsection 261(4) apply to the particular taxation year, or a preceding taxation year, and each subsequent taxation year of the taxpayer and has filed that election with the Minister of National Revenue in prescribed form and manner on or before the taxpayer's filing due date
    - for the taxation year immediately preceding the first taxation year in respect of which the election was made, or
    - where there was not a taxation year immediately preceding the first taxation year in respect of which the election was made, for the first taxation year in respect of which the election was made,
- there must be a functional currency in respect of the taxpayer for the particular taxation year,
- where the taxpayer's taxation year immediately preceding the particular taxation year was a functional currency year of the taxpayer, the functional currency of the taxpayer determined for that taxation year must be the same as the functional currency of the taxpayer determined for the particular taxation year, and
- where the taxpayer's taxation year immediately preceding the particular taxation year was a Canadian currency year of the taxpayer, no preceding taxation year of the taxpayer was a functional currency year of the taxpayer.

Functional currency reporting

ITA
261(4)

New subsection 261(4) of the Act is the operative rule for section 261. It sets out the rules that are to be followed in a particular taxation year of a taxpayer that is a functional currency year of a taxpayer. Specifically, the following operative rules apply:

- the taxpayer's Canadian tax results for the particular taxation year are to be determined using the taxpayer's functional currency for the particular taxation year,
- each reference in the Act or the Regulations to a particular amount expressed in Canadian dollars is to be read as a reference to a particular amount expressed in the taxpayer's functional currency determined by applying the currency exchange rate in respect of the conversion of Canadian currency into that functional currency as of the first day of the particular taxation year,
- subject to subsection 79(7), paragraphs 80(2)(*k*) and 142.7(8)*(b)*, if a particular amount that is relevant in computing the taxpayer's Canadian tax results for the particular taxation year is an amount expressed in a currency other than the taxpayer's functional currency, that amount is to be converted to an amount expressed in the taxpayer's functional currency by using the rates of exchange quoted by the Bank of Canada at noon on the day that the particular amount came into existence for the exchange of the Canadian dollar for a unit of each of those currencies or such other rate of exchange as is acceptable to the Minister of National Revenue,
- the references in subsection 79(7), paragraph 80(2)(*k*) and subsections 80.01(11) and 80.1(8) to "Canadian currency" are instead to be read as references to "the taxpayer's functional currency",
- the reference in subsection 39(2) to "the value of the currency or currencies of one or more countries other than Canada relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year" is to be read as reference to "the value of the currency or currencies of one or more countries (other than the taxpayer's functional currency for the taxation year) relative to a taxpayer's functional currency for a taxation year, the taxpayer has made a gain or sustained a loss in the taxation year" and the references in that subsection to "currency of a country other than Canada" shall be read as references to "currency other than the taxpayer's functional currency for the taxation year",
- the definition "foreign currency" in subsection 248(1) is, in respect of the taxpayer, to be, at any time in the particular taxation year, read as meaning a currency other than the taxpayer's functional currency for the particular taxation year, and
- where a taxation year of a foreign affiliate of the taxpayer ends in the particular taxation year of the taxpayer, the references to "Canadian currency" in section 95 (and the references in the Regulations made for the purposes of section 95) are to be read, in respect of the foreign affiliate, as a reference to "the taxpayer's functional currency for the taxpayer's particular taxation year".

Converting Canadian currency amounts

ITA
261(5)

Proposed subsection 261(5) of the Act provides rules that are to be applied in a particular functional currency year of a taxpayer when the taxpayer is determining certain tax attributes that are computed by reference to amounts of expenditures, debt or other amounts made or incurred by the taxpayer that arose in a Canadian currency year that precedes the initial functional currency year of the taxpayer. Specifically, subsection 261(5) provides that, in applying the provisions of the Act to the taxpayer for a particular functional currency year of the taxpayer

- subject to the rules in subparagraph (10)(*b*)(iii), in determining the amount (expressed in the taxpayer's functional currency) that may be deducted, or relevant in determining the amount that may be deducted, under subsection 37(1) or 66(4), section 110.1 or 111 or subsection 126(2), 127(5), 129(1), 181.1(4) or 190.1(3) in the particular functional currency year, each amount (determined in Canadian currency) that is relevant to the determination and that was determined for a taxation year of the taxpayer that preceded the taxpayer's initial functional currency year, is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer,
- in determining the cost (determined in the taxpayer's functional currency) to the taxpayer of a property at any time in the particular functional currency year, that was acquired by the taxpayer before the beginning of the taxpayer's initial functional currency year, the cost (determined in Canadian currency) to the taxpayer of the property at the end of the last Canadian currency year of the taxpayer is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer,
- in determining, at any time in the particular functional currency year, the adjusted cost base (expressed in the taxpayer's functional currency) to the taxpayer of a capital property that was acquired by the taxpayer before the beginning of the taxpayer's initial functional currency year, each amount (determined in Canadian currency) that was required by section 53 to be added or deducted in computing, at any time before the beginning of the initial functional currency year of the taxpayer, the adjusted cost base of the property to the taxpayer is to be converted to the taxpayer's functional currency for the particular functional currency year using the transitional exchange rate of the taxpayer,
- in determining, at any time in the particular functional currency year, the amount (determined in the taxpayer's functional currency) of the taxpayer's undepreciated capital cost of depreciable property of a prescribed class, cumulative eligible capital in respect of a business, cumulative Canadian exploration expense (within the meaning assigned by subsection 66.1(6)), cumulative Canadian development expense (within the meaning assigned by subsection 66.2(5)), cumulative foreign resource expense in respect of a country other than Canada (within the meaning assigned by subsection 66.21(1)) and cumulative Canadian oil and gas property expense (within the meaning assigned by subsection 66.4(5)), (each of such amount referred to as a "pool amount") each amount (determined in Canadian currency) that was added to or deducted from a particular pool amount of the taxpayer in respect of a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer,
- in determining any amount (determined in the taxpayer's functional currency) that has been deducted or claimed as a reserve in computing the income of the taxpayer for its last Canadian currency year, that amount (determined in Canadian Currency) deducted or claimed as a reserve is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer,

- in determining the amount (determined in the taxpayer's functional currency) of any outlay or expense referred to in subsection 18(9) that was made or incurred by the taxpayer and the amount that was deducted in respect of that outlay or expense in a taxation year preceding the taxpayer's initial functional currency year, such amounts (determined in Canadian currency for those years) of outlay or expense or deductions are to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer,
- in determining the amount (determined in the taxpayer's functional currency) of the taxpayer's paid-up capital in respect of any class of shares of its capital stock at any time in the particular functional currency year, any amount (determined in Canadian currency) added or deducted in computing the taxpayer's paid-up capital in respect of the class in a taxation year preceding the initial functional currency year of the taxpayer is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer,
- where the taxpayer issued a debt obligation in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer, in determining the amount (determined in the taxpayer's functional currency) for which the obligation was issued, the principal amount (determined in the taxpayer's functional currency) of the obligation, any amount (determined in the taxpayer's functional currency) paid in satisfaction of the principal amount of the obligation in a taxation year of the taxpayer preceding the taxpayer's initial functional currency year, and the amount (determined in the taxpayer's functional currency) of any gain or loss attributable to the fluctuation in the values of currencies:
  - where the obligation was issued in the taxpayer's functional currency, the amount (determined in the taxpayer's functional currency) for which the obligation was issued, the principal amount (determined in the taxpayer's functional currency) of the obligation and the amounts (determined in the taxpayer's functional currency) paid in satisfaction of the principal amount of the obligation in a taxation year preceding the taxpayer's initial functional currency year are those amounts determined in those years in the taxpayer's functional currency,
  - where the obligation was issued in Canadian currency, the amount for which the obligation was issued (determined in Canadian currency), the principal amount (determined in Canadian currency) of the obligation and the amounts (determined in Canadian currency) paid in satisfaction of the principal amount of the obligation in a taxation year preceding the taxpayer's initial functional currency year are to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer, and
  - where the obligation was issued in a currency (the "third currency") other than Canadian currency or the functional currency of the taxpayer, the amount (determined in the third currency) for which the obligation was issued, the principal amount (determined in the third currency) of the obligation and the amounts (determined in the third currency) paid in satisfaction of the principal amount of the obligation in a taxation year preceding the taxpayer's initial functional currency year are to be converted to the taxpayer's functional currency by using the currency exchange rate in respect of the conversion of those amounts on the last day of the taxpayer's last Canadian currency year,
- in determining the amount (determined in the taxpayer's functional currency) of tax payable under Part I for a Canadian currency year, for the purpose of determining the taxpayer's first instalment base or second instalment base for the taxpayer's initial functional currency year, the amount (determined in Canadian currency) of tax payable is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer, and
- any amount (determined in Canadian currency), not already referred to in subsection 261(5), determined under the provisions of the Act in or in respect of a taxation year preceding the taxpayer's initial functional currency year that is relevant in determining the Canadian tax results (determined in the taxpayer's functional currency) of the taxpayer for the particular functional currency year is to be converted to the taxpayer's functional currency using the transitional exchange rate of the taxpayer.

Example 1

Facts

1. *Y Corp, a corporation resident in Canada elects to become a foreign currency reporter and to determine its income for tax purposes in its US functional currency for the 2008 and subsequent taxation years.*
2. *As of December 31, 2007 (the end of Y Corp's 2007 taxation year), Y Corp's tax balance sheet was as follows:*

Cash	C$10,000
Short-term deposits	C$5,000
Inventory [1]	C$25,000
Total Current Assets	C$40,000
Land	C$40,000
Building (Class 1) (less accumulated depreciation of C$4,841)	C$45,159
Equipment (Class 8) (less accumulated depreciation of C$6,360)	C$8,640
Shares in other corporations	C$10,000
Total Assets	C$143,799
Debt	
Long term debt [2]	C$70,000
Shareholder's Equity	
Common stock	C$60,000
Accumulated earnings	C$18,799
Deficit [3]	(C$5,000)
Total Liabilities and Shareholder's Equity	C$143,799

Notes

[1] Inventory denominated in US$ converted to C$ at average rate for year

[2] Debt issued in 2005 with principal amount of US$90,000 converted at time of issue to C$100,000, repayment terms of US$9,000/year, starting December 31, 2005. There was no foreign exchange gain or loss on the December 31, 2005 and 2006 payments as the Canada/US exchange rate for both those years was C$1=US$0.90. Y Corp realized a foreign exchange gain on the December 31, 2007 payment as the Canada/US exchange had changed to C$1=US$0.95.

[3] Capital loss of C$5,000 realized by Y Corp in 2006.

3. In 2007, the average Canada-US currency exchange rate for the year is C$1 = US$0.95, which is Y Corp's transitional exchange rate.

Results

Conversions on Transition

Tax Balance sheet of Y Corp as of January 1, 2008:

Cash [1]	US$9,500
Short-term deposits [2]	US$4,750
Inventory [3]	US$23,750
Total Current Assets	US$38,000
Land [4]	US$38,000
Building (Class 1) (less accumulated depreciation of US$4,599) [5]	US$42,901
Equipment (Class 8) (less accumulated depreciation of US$6,042) [6]	US$8,208
Shares in other corporations [7]	US$9,500
Total Assets	US$136,609
Debt	
Long term debt [8]	US$63,000
Future tax liability [9]	US$3,500
Shareholder's Equity	
Common stock [10]	US$57,000
Accumulated earnings [11]	US$17,859
Deficit [12]	(US$4,750)
Total Liabilities and Shareholder's Equity	US$136,609

Notes

[1] Cash cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*b*).

[2] Deposits cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*b*).

[3] Inventory cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*b*).

[4] Land cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*b*).

[5] Building cost and amounts relevant to computing undepreciated capital cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraphs 261(5)(*b*) and (*d*).

[6] Equipment cost and amounts relevant to computing undepreciated capital cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraphs 261(5)(*b*) and (*d*).

[7] Shares cost converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*b*).

[8] Debt issuance and principal amount and amounts paid on debt are those amounts determined in US$ in the years when amounts arose, pursuant to subparagraph 261(5)(*h*)(i) – Principal amount = US$90,000 – 3 payments of US$9,000 = US$63,000.

[9] Amount of foreign exchange gain that would have been realized by Y Corp if it had settled the debt on December 31, 2007 is converted to US$ and will be realized as payments are made in satisfaction of the principal amount of the debt in the future – C$3,684 x US$0.95 / C$1 = US$3,500, pursuant to subsection 261(6).

[10] Paid-up capital converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*g*).

[11] The amount required to balance the balance sheet that should reflect accumulated earnings converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(*j*).

[12] Carry forward of capital loss converted into US functional currency at transitional exchange rate of C$1 = US$0.95, pursuant to paragraph 261(5)(*a*).

Deferred amounts relating to debt

ITA
261(6)

Proposed subsection 261(6) of the Act provides rules with respect to the realization of any accrued and unrealized foreign exchange gains and losses in respect of debt obligations of a taxpayer outstanding immediately before the beginning of the initial foreign currency year of the taxpayer. Subsection (6) provides that, in applying the Act to a taxpayer for a particular functional currency year of the taxpayer

- where, at any time in the particular functional currency year, the taxpayer has made a particular payment (determined in the taxpayer's functional currency) on account of the principal amount (determined in the taxpayer's functional currency) of a debt obligation that was issued by the taxpayer in a Canadian currency year of the taxpayer that ended before the beginning of the initial functional currency year of the taxpayer
    - the taxpayer is deemed to have a capital gain under paragraph 39(2)(*a*) or income, as the case may be, attributable to the fluctuation in the values of currencies in respect of the particular payment for that particular functional currency year equal to the amount determined by the formula

$$A \times B/C$$

where

A is the amount determined by the formula

$$D \times E$$

where

D is the amount (determined in Canadian currency), if any, that would have been determined to be the taxpayer's capital gain under paragraph 39(2)(*a*) or income, as the case may be, if the principal amount of the debt obligation outstanding (determined in Canadian currency), immediately before the end of the last Canadian currency year of the taxpayer, had been settled by a payment by the taxpayer to the holder of the obligation of an amount equal to that outstanding principal amount at that time, and

E is the transitional exchange rate of the taxpayer,

B is the amount of the particular payment (determined in the taxpayer's functional currency), and

C is the principal amount of the debt obligation outstanding (determined in the taxpayer's functional currency) at the beginning of the initial functional currency year of the taxpayer,

- the taxpayer is deemed to have a capital loss under paragraph 39(2)(b) or a loss, as the case may be, attributable to the fluctuation in the values of currencies in respect of the particular payment for that particular functional currency year equal to the amount determined by the formula

$$F \times G/H$$

where

F is the amount determined by the formula

$$I \times J$$

where

I is the amount (determined in Canadian currency), if any, that would have been determined to be the taxpayer's capital loss under paragraph 39(2)(*b*) or loss, as the case may be, if the principal amount of the debt obligation outstanding (determined in Canadian currency), immediately before the end of the last Canadian currency year of the taxpayer, had been settled by a payment by the taxpayer to the holder of the obligation of an amount equal to that outstanding principal amount at that time, and

J is the transitional exchange rate of the taxpayer,

G is the amount of the particular payment (determined in the taxpayer's functional currency), and

H is the principal amount of the debt obligation outstanding (determined in the taxpayer's functional currency) at the beginning of the initial functional currency year of the taxpayer, and

- where a debt obligation is denominated in a currency other than the taxpayer's functional currency, any amount determined under element B or element G in the above formulae is to be determined with reference to the relative value of that currency and the taxpayer's functional currency for the particular functional currency year at the beginning of the initial functional currency year of the taxpayer, and

- notwithstanding paragraph 80(2)(*k*), where an obligation of the taxpayer was issued in a taxation year of the taxpayer preceding the initial functional currency year of the taxpayer in a currency other than the taxpayer's functional currency for the particular functional currency year, a forgiven amount arising at any time in the particular functional currency year in respect of the obligation is to be determined by reference to the currency exchange rate on the last day of the taxpayer's last Canadian currency year in respect of a conversion of an amount determined in the other currency into an amount determined in the taxpayer's functional currency.

Example 2

Facts

1. *X Corp issues a debt obligation on January 1, 2005 in the amount of AU$100,000 with a 10 year term with the principal payable in the amount of AU$10,000 on December 31 of each year from 2005 to 2014.*
2. *X Corp elects that subsection 261(4) apply for its 2008 taxation year (the calendar year) and subsequent years with a functional currency of US$.*
3. *The Canada / Australia exchange rate on January 1, 2005 was C$1 = AU$1.66 and on December 31, 2007 was C$1 = AU$1.8.*
4. *For 2007, the average US /Australia exchange rate was US$1 = AU$2 and the average Canada / US exchange rate was C$1 = US$0.90.*

Results

1. Application of paragraph 261(5)(h)

Principal amount of debt obligation converted to US$50,000

Debt issued (AU$100,000 x US$1/AU$2)		*US$50,000.*
Amounts paid:		
2005 AU$10,000 x US$1/AU$2 =	*US$5,000*	
2006 AU$10,000 x US$1/AU$2 =	*US$5,000*	
2007 AU$10,000 x US$1/AU$2 =	*US$5,000*	
	US$15,000	*(US$15,000.)*
Amount outstanding on debt obligation		*US$35,000*

2. Application of subsection 261(6)

When the December 31, 2008 payment is made, in addition to any foreign exchange gain or loss arising from the fluctuation in the relative values of US and Australian currency since December 31, 2007, subsection 261(6) will also apply to deem a US$421 gain to X Corp for its 2008 taxation year.

A x B/C = US$2,952 x (US$5,000 / US$35,000) = US$421

where

A = US$2,952 (the amount, converted into US$, of foreign exchange gain that would have been realized by X Corp if the remainder of the principal amount outstanding on the debt on the last day of X Corp's last Canadian currency year had been paid on that day) ((AU$70,000 x C$1/AU$1.66) – (AU$70,000 x C$1/AU$1.8)) x US$0.90 / C$1

B = US$5,000 (the amount of the payment in satisfaction of the principal amount)

C= US$35,000 (the amount of the debt outstanding on the first day of X Corp's first functional currency year)

Amounts payable or refundable in respect of a functional currency year

ITA
261(7)

Proposed subsection 261(7) of the Act covers situations where amounts are payable by a taxpayer or refundable to a taxpayer in respect of a functional currency year.

Where an amount is first required under the Act to be paid at any particular time by a taxpayer to the Receiver General in respect of a functional currency year of the taxpayer

- the amount that is determined in the taxpayer's functional currency is to be converted to Canadian currency by using the currency exchange rate on the earlier of the day the amount is so paid and the day that includes the particular time in respect of a conversion of an amount determined in the taxpayer's functional currency into an amount determined in Canadian currency, and
- the Canadian currency amount determined is to be paid to the Receiver General in Canadian currency.

Conversely, where an amount (determined in the taxpayer's functional currency) is first required under the Act to be refunded to the taxpayer by the Minister of National Revenue, at any particular time in a particular functional currency year of the taxpayer or is deemed at any time to be paid on account of an amount payable by the taxpayer under the Act for a particular functional currency year of the taxpayer

- that amount is to be converted to Canadian currency by applying to the amount the currency exchange rate on the particular day that includes the particular time in respect of a conversion of an amount determined in the taxpayer's functional currency into an amount determined in Canadian currency, and
- the Canadian currency amount is to be paid to the taxpayer by the Minister or is deemed to have been paid to the taxpayer by the Minister, as the case may be, in Canadian currency.

Conditions for the application of subsection (9)

ITA
261(8)

Proposed subsection 261(8) of the Act states that subsection 261(9) will apply to a taxpayer for its taxation years beginning after its last functional currency year.

Converting functional currency amounts

ITA
261(9)

Proposed subsection 261(9) of the Act provides rules for the purpose of applying the Act in respect of a taxation year that is a Canadian currency year (defined in proposed subsection 261(1)) of the taxpayer that commences after the taxpayer's last functional currency year (defined in proposed subsection 261(1)).

More specifically, subsection 261(9) provides that in applying the Act to a taxpayer for a particular Canadian currency year of a taxpayer

- subject to subparagraph (10)(*a*)(iii), in determining the amount (expressed in Canadian currency) that may be deducted, or relevant in determining the amount that may be deducted, under subsection 37(1) or 66(4), section 110.1 or 111 or subsection 126(2), 127(5), 129(1), 181.1(4) or 190.1(3) in the particular Canadian currency year,
  - each amount (determined in the taxpayer's functional currency) that is relevant to the determination and that was first required to be determined in a functional currency year of the taxpayer that preceded the particular Canadian currency year, is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
  - each amount (determined in Canadian currency) that is relevant to the determination and that was first required to be determined in a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year,
- in determining the cost (determined in Canadian currency) to the taxpayer of a property at any time in the particular Canadian currency year,
  - where the property was acquired by the taxpayer in a functional currency year of the taxpayer preceding the particular Canadian currency year, the cost (determined in the taxpayer's functional currency) to the taxpayer of the property is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
  - where the property was acquired by the taxpayer in a Canadian currency year of the taxpayer preceding the particular Canadian currency year, the cost (determined in Canadian currency) to the taxpayer of the property is the cost (determined in Canadian currency) to the taxpayer of the property determined in Canadian currency in that Canadian currency year,

- in determining the adjusted cost base (determined in Canadian currency) to the taxpayer of a capital property at any time in the particular Canadian currency year,
    - each amount (determined in the taxpayer's functional currency for the functional currency year) that is required by section 53 to be added or deducted in computing the adjusted cost base of the property to the taxpayer and was first required by that section to be added or deducted at any time in a functional currency year of the taxpayer preceding the particular Canadian currency year is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
    - each amount (determined in Canadian currency) that is required by section 53 to be added or deducted in computing the adjusted cost base of the property to the taxpayer and was first required by that section to be added or deducted at any time in a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year,
- in determining, at any time in the particular Canadian currency year, the amount (determined in Canadian currency) of the taxpayer's undepreciated capital cost of depreciable property of a prescribed class, cumulative eligible capital in respect of a business, cumulative Canadian exploration expense (within the meaning assigned by subsection 66.1(6)), cumulative Canadian development expense (within the meaning assigned by subsection 66.2(5)), cumulative foreign resource expense in respect of a country other than Canada (within the meaning assigned by subsection 66.21(1)) and cumulative Canadian oil and gas property expense (within the meaning assigned by subsection 66.4(5)) (each of such amount referred to as a "pool amount") in the particular Canadian currency year,
    - each amount (determined in the taxpayer's functional currency) that is required to be added to or deducted from a pool amount and was first required to be added or deducted in respect of a functional currency year of the taxpayer preceding the particular Canadian currency year is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
    - each amount (determined in Canadian currency) that is required to be added to or deducted from a pool amount and was first required to be added or deducted in respect of a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year,
- in determining any amount (determined in Canadian currency) that has been deducted or claimed as a reserve in computing the income of the taxpayer in the last functional currency year of the taxpayer preceding the particular Canadian currency year, that amount (determined in the taxpayer's functional currency) deducted or claimed as a reserve for that last functional currency year is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that last functional currency year,
- in determining the amount (expressed in Canadian currency) of any outlay or expense referred to in subsection 18(9) that was made or incurred by the taxpayer and the amount that was deducted by the taxpayer in respect of that outlay or expense in respect of a taxation year of the taxpayer preceding the particular Canadian currency year,
    - such of those amounts (determined in the taxpayer's functional currency) that were first made or incurred or deducted by the taxpayer in or in respect of a functional currency year of the taxpayer preceding the particular Canadian currency year are converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
    - such of those amounts (determined in Canadian currency) that were first made or incurred or deducted by the taxpayer in or in respect of a Canadian currency year of the taxpayer preceding the particular Canadian currency year are the amounts that were so determined in Canadian currency in that Canadian currency year,

- in determining, at any time in the particular Canadian currency year, the amount (determined in Canadian currency) of the taxpayer's paid-up capital in respect of any class of shares of its capital stock,
    - any amount (determined in the taxpayer's functional currency) that was first added or deducted in computing the taxpayer's paid-up capital in respect of the class in a functional currency year of the taxpayer preceding the particular Canadian currency year is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
    - any amount (determined in Canadian currency) that was first added or deducted in computing the taxpayer's paid-up capital in respect of the class in a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that preceding Canadian currency year,
- where an obligation was issued in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer, in determining, at any time in the particular Canadian currency year, the amount (expressed in Canadian currency) for which an obligation was issued, the principal amount (expressed in Canadian currency) of the obligation, the amounts (expressed in Canadian currency) paid in satisfaction of the principal amount of the obligation, and the amount (determined in Canadian currency), if any, of any gain or loss attributable to the fluctuation in the value of the Canadian currency relative to the value of the currency in which the obligation was issued,
    - subject to the rule described below, where the obligation was issued in a currency other than Canadian currency,
        - the amount (determined in the currency in which the obligation was issued) for which the obligation was issued and the principal amount (determined in the currency in which the obligation was issued) of the obligation are
            - where the taxation year of the taxpayer in which the obligation was issued was a Canadian currency year of the taxpayer, the amounts (determined in Canadian currency) that were so determined in Canadian currency, or
            - where the taxation year of the taxpayer in which the obligation was issued was a functional currency year of the taxpayer, the amounts determined by converting those amounts (determined in the taxpayer's functional currency) to Canadian currency by using the reversionary exchange rate of the taxpayer for that functional currency year, and
        - the amounts (determined in the currency in which the obligation was issued) paid at any time in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer in satisfaction of the principal amount of the obligation are
            - where the taxation year of the taxpayer in which an amount was paid was a Canadian currency year of the taxpayer, the amount (determined in Canadian currency) that was so determined in Canadian currency in that Canadian currency year, or
            - where the taxation year of the taxpayer in which an amount was paid was a functional currency year of the taxpayer, the amount determined by converting that amount (determined in the taxpayer's functional currency) to Canadian currency by using the reversionary exchange rate of the taxpayer for that functional currency year, and
    - where the obligation was issued in Canadian currency, the amount (determined in Canadian currency) for which the obligation was issued, the principal amount (determined in Canadian currency) of the obligation and the amounts (determined in Canadian currency) paid, in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer, in satisfaction of the principal amount of the obligation, are the amounts so determined in Canadian currency in those preceding years,

- notwithstanding the rule described above, where an obligation was issued in a currency other than Canadian currency in a taxation year of the taxpayer preceding the initial reversionary year of the taxpayer, in determining, in respect of subsection 79(7) or paragraph 80(2)(*k*) or 142.7(8)(*b*), the amount (expressed in Canadian currency) for which the obligation was issued, the principal amount (determined in Canadian currency) of the obligation, and the amounts (determined in Canadian currency) paid in satisfaction of the principal amount of the obligation, at any time in the particular Canadian currency year, those amounts are to be determined as if subsections (1) to (7) had not applied to the taxpayer for any preceding taxation year,
- where the particular Canadian currency year is the initial reversionary year of the taxpayer, in determining the amount (determined in Canadian currency) of tax payable under Part I in the last functional currency year of the taxpayer, for the purpose of determining the taxpayer's first instalment base or second instalment base in the particular Canadian currency year, the amount (determined in the taxpayer's functional currency) of tax payable is to be converted to Canadian currency using the reversionary exchange rate of the taxpayer for that last functional currency year, and
- in determining any amount (determined in Canadian currency and referred to as the "specified amount"), at any time in or in respect of the particular Canadian currency year, other than an amount already included in subsection (9), that is relevant in determining the Canadian tax results of the taxpayer for the particular Canadian currency year
    - any amount (determined in the taxpayer's functional currency for the functional currency year) that is relevant in determining the specified amount and was first determined in or in respect of a functional currency year of the taxpayer preceding the particular Canadian currency year, is converted to Canadian currency using the reversionary exchange rate of the taxpayer for that functional currency year, and
    - any amount (determined in Canadian currency) that is relevant in determining the specified amount and was first determined in or in respect of a Canadian currency year of the taxpayer preceding the particular Canadian currency year is the amount that was so determined in Canadian currency in that Canadian currency year.

Example 3

Facts

(the same as Example 1 with these additional facts):

1. *In 2010, Y Corp ceases to be a foreign currency reporter and must determine its income for tax purposes for that year in Canadian currency.*
2. *The average US/Canada exchange rate for Y Corp's 2008 taxation year is US$1 = C$1.11.*
3. *The average US/Canada exchange rate for Y Corp's 2009 taxation year is US$1 = C$1.*
4. *At December 31, 2009, Y Corp's tax balance sheet is as follows:*

Cash	US$9,500
Short-term deposits	US$4,750
Inventory	US$23,750
Total Current Assets	US$38,000
Land	US$38,000
Building (Class 1) (less accumulated depreciation of US$7,962) [1]	US$39,538
Equipment (Class 8) (less accumulated depreciation of US$8,997) [2]	US$5,253
Shares in other corporations	US$9,500
Total Assets	US$130,291
Debt	
Long term debt [3]	US$45,000
Future tax liability [4]	US$2,500
Shareholder's Equity	
Common stock	US$57,000
Preferred stock [5]	US$10,000
Accumulated earnings [6]	US$30,541
Deficit	(US$4,750)
Total Liabilities and Shareholder's Equity	US$130,291

Notes

[1] US$1.716 in CCA deducted in 2008 and US$1,647 deducted in 2009.

[2] US$1,642 in CCA deducted in 2008 and US$1.313 deducted in 2009.

[3] US$9.000 paid in satisfaction of the debt in each of 2008 and 2009.

[4] $500 deemed capital gain realized under subsection 261(6) in each of 2008 and 2009 (out of a total of US$3.500 gain that will have been deemed to have been realized once the entire principal amount is satisfied).

[5] 10,000 preferred shares issued in 2009 by Y Corp with PUC of US$10.000.

[6] Accumulated earnings of US$12.682 added in 2009 to the US$17,859 accumulated in Canadian currency years.

Results

Conversion on Reversion

Conversion of tax attributes of Y Corp under subsection 261(9) for the 2010 Taxation year

Tax attributes as of the end of 2009 must be converted into Canadian amounts. The tax balance sheet of Y Corp on January 1, 2010 is as follows:

Cash [1]	C$9,500
Short-term deposits [2]	C$5,000
Inventory [3]	C$23,750
Total Current Assets	C$38,250
Land [4]	C$40,000
Building (Class 1) (less accumulated depreciation of C$8,393) [5]	C$41,607
Equipment (Class 8) (less accumulated depreciation of C$9,496) [6]	C$5,504
Shares in other corporations [7]	C$10,000
Total Assets	C$135,358
Debt	
Long term debt [8]	C$50,000
Future tax liability [9]	C$0
Shareholder's Equity	
Common stock [10]	C$60,000
Preferred Stock [11]	C$10,000
Accumulated earnings [12]	C$20,358
Deficit [13]	(C$5,000)
Total Liabilities and Shareholder's Equity	C$135,358

Notes

[1] Cash cost converted into Canadian currency at 2009 reversionary exchange rate of C$1 = US$1, pursuant to subparagraph 261(9)(*b*)(i) (for the purposes of this example, it is assumed that all of the cash was obtained in 2009).

[2] Cost of deposits acquired in Canadian currency year deemed to be the original Canadian currency cost (C$5,000), pursuant to subparagraph 261(9)(*b*)(ii).

[3] Cost of inventory converted into Canadian currency at 2009 reversionary exchange rate of C$1 = US$1, pursuant to subparagraph 261(9)(*b*)(i) (for the purposes of this example, it is assumed that all of the inventory was obtained in 2009).

[4] Cost of land acquired in Canadian currency year deemed to be the original Canadian currency cost, pursuant to subparagraph 261(9)(*b*)(ii).

[5] Cost of building acquired in Canadian currency year deemed to be the original Canadian currency cost (C$50,000), pursuant to subparagraph 261(9)(*b*)(ii). Pursuant to subparagraph 261(9)(*d*)(ii), amounts added to and subtracted from the undepreciated capital cost of the building in Canadian currency years (2005 – 2007 - C$4,841) are those amounts determined in those years. Pursuant to subparagraph 261(9)(*d*)(i), amounts added to and subtracted from the undepreciated capital cost of the building in functional currency years 2008 and 2009 are converted to Canadian currency at the respective reversionary exchange rate (2008 – US$1,716 / US$1x C$1.11 = C$1,905) (2009 – US$1,647 / US$1 x C$1 = C$1,647).

[6] Cost of equipment acquired in Canadian currency year deemed to be the original Canadian currency cost (C$15,000), pursuant to paragraph 261(9)(*b*). Pursuant to subparagraph 261(9)(*d*)(ii), amounts added to and subtracted from the undepreciated capital cost of the equipment in, Canadian currency years (2005 – 2007 - C$6,360) are those amounts determined in those years. Pursuant to subparagraph 261(9)(*d*)(i), amounts added to and subtracted from the undepreciated capital cost of the equipment in functional currency years 2008 and 2009 are converted to Canadian currency at the respective reversionary exchange rate (2008 – US$1,642 / US$1 x C$1.11 = C$1,823) (2009 – US$1,313 / US$1 x C$1 = C$1,313).

[7] Cost of shares acquired in Canadian currency year deemed to be the original Canadian currency cost (C$10,000), pursuant to subparagraph 261(9)(*b*)(ii).

[8] Principal amount and amount for which debt was issued of debt obligation acquired in Canadian currency year deemed to be the original Canadian currency principal amount and amount for which debt was issued (C$100,000), pursuant to subclause 261(9)(*h*)(i)(A)(I). The amounts paid in satisfaction are determined, for the purposes of determining a forgiven amount, as if subsections 261(1) to (7) had not applied (5 payments of C$10,000).

[9] When the taxpayer begins to report in Canadian currency, any unrealized deemed gains that would have been deemed on future payments of principal in functional currency years disappear.

[10] Amounts added to paid-up capital in Canadian currency year deemed to be the original Canadian currency cost (C$60,000), pursuant to subparagraph 261(9)(*g*)(ii).

[11] Amounts added to paid-up capital in 2009 converted into Canadian currency at 2009 reversionary exchange rate of C$1 = US$1, pursuant to subparagraph 261(9)(*g*)(i) (US$10,000 / US$1 x C$1 = C$10,000).

[12] The amount required to balance the balance sheet and should reflect accumulated earnings expressed in Canadian dollars.

[13] Carry forward capital losses added in Canadian currency years deemed to be the Canadian amount originally added to capital loss (C$5,000), pursuant to subparagraph 261(9)(*a*)(ii).

Functional currency and Canadian currency amounts carried back

ITA
261(10)

Proposed subsection 261(10) mandates certain rules where an amount is claimed by a taxpayer for a taxation year of the taxpayer under section 111 or subsection 126(2), 127(5), 181.1(4) or 190.1(3) in respect of a loss incurred or tax credit arising, or an expenditure made, in a taxation year of the taxpayer.

Where the particular taxation year is a Canadian currency year of the taxpayer, the amount that may be claimed (determined in Canadian currency) is to be determined,

- by converting each amount (determined in the taxpayer's functional currency) of a loss incurred, tax credit arising and expenditure made in or in respect of a particular functional currency year of the taxpayer that ends after the particular taxation year to Canadian currency using the currency exchange rate in respect of the conversion of an amount determined in the taxpayer's functional currency into an amount determined in Canadian currency on the last day of that particular functional currency year,
- as if each amount (determined in Canadian currency) of a loss incurred, tax credit arising, expenditure made and deduction claimed in or in respect of a Canadian currency year of the taxpayer were the amount of that loss incurred, tax credit arising, expenditure made and deduction claimed in Canadian currency in the Canadian currency year of the taxpayer, and
- by converting each amount (determined in the taxpayer's functional currency) claimed in or in respect of a particular functional currency year of the taxpayer preceding the initial reversionary year of the taxpayer (in respect of an amount of loss incurred, tax credit arising or expenditure made by a taxpayer in or in respect of a Canadian currency year) to Canadian currency using the currency exchange rate on the last day of the Canadian currency year of the taxpayer in or in respect of which the amount claimed arose in respect of the conversion of an amount determined in the taxpayer's functional currency to an amount determined in Canadian currency.

Where the particular taxation year is a functional currency year of the taxpayer, the amount that may be claimed (determined in the taxpayer's functional currency) is to be determined,

- by converting an amount (determined in Canadian currency) of a loss incurred, tax credit arising and expenditure made in or in respect of a particular Canadian currency year of the taxpayer that ends after the particular taxation year to an amount determined in the taxpayer's functional currency using the currency exchange rate on the last day of the particular Canadian currency year of the taxpayer in respect of the conversion of an amount determined in Canadian currency into an amount determined in the taxpayer's functional currency,
- as if an amount (determined in the taxpayer's functional currency) of a loss incurred, tax credit arising, expenditure made and deduction claimed in or in respect of a functional currency year of the taxpayer were the amount of that loss incurred, tax credit arising, expenditure made and deduction claimed in the taxpayer's functional currency, and

- by converting an amount (determined in Canadian currency) claimed in or in respect of a particular Canadian currency year of the taxpayer preceding the initial functional currency year of the taxpayer (in respect of an amount of loss incurred, tax credit arising or expenditure made by a taxpayer in or in respect of a functional currency year) to the functional currency of the taxpayer using the currency exchange rate on the last day of the functional currency year of the taxpayer in or in respect of which the amount claimed arose in respect of the conversion of an amount determined in Canadian currency to an amount determined in the taxpayer's functional currency.

Example 4

Facts

(the same as Example 1, with these additional facts):

1. *In 2008, Y Corp realizes a non-capital loss of US$15,000, and Y Corp applies the loss against its 2007 income.*
2. *In 2007, Y Corp had income for tax purposes of C$7,000.*

Results

Loss Carry-Back From 2008

Conversion of 2008 non-capital losses – losses carried back to 2007 and loss carry-forward balance

A. Loss carried back pursuant to subparagraph 261(10)(a)(i)

Maximum non-capital loss carry-back to 2007 in respect of the 2008 non-capital loss of US$15,000, using the currency exchange rate on the last day of Y Corp's 2008 taxation year = US$15,000 / US$1 x C$1.11 = C$16,667.

2007 income – C$7,000

Amount claimed C$7,000

B. Loss carry-forward pursuant to subparagraph 261(10)(b)(iii)

2008 non-capital loss of US$15,000

Amount claimed in 2007 – C$7,000 / C$1.11 / US$1 = US$6,300

Carry-forward US$15,000 – US$6,300 = US$8,700

Subsection 88(1) wind-ups – effect on subsidiary

ITA
261(11) & (12)

Proposed subsections 261(11) and (12) of the Act deal with situations where a corporation is wound up into a parent under subsection 88(1) of the Act in a functional currency year of the corporation.

Proposed subsection 261(11) of the Act provides that subsection 261(12) will apply to a corporation (the "subsidiary") that has been wound up into another corporation (the "parent") if

- subsection 88(1) applied to the subsidiary and the parent in respect of the winding-up of the subsidiary,
- the taxation year of the subsidiary (the "distribution year of the subsidiary") in which any portion of a property (such portion of the property referred to as the "distributed property") of the subsidiary was distributed to the parent, or any portion of an obligation (such portion of the obligation referred to as the "assumed obligation") of the subsidiary was assumed by the parent, on the winding-up of the subsidiary would, were section 261 read without reference to subsection 261(11), be a functional currency year of the subsidiary, and

- either
    - where the taxation year of the parent (referred to as the "acquisition year of the parent") in which the subsidiary distributed the distributed property to the parent, or the assumed obligation of the subsidiary was assumed by the parent, on the winding-up of the subsidiary was a functional currency year of the parent, the functional currency of the parent for the acquisition year of the parent was not the functional currency of the subsidiary for the distribution year of the subsidiary, or
    - the acquisition year of the parent was not a functional currency year of the parent.

Proposed subsection 261(12) of the Act provides that, where it applies to the subsidiary, for the purposes of section 261

- the last taxation year of the subsidiary that ends immediately before the beginning of the distribution year of the subsidiary is deemed to be the last functional currency year of the subsidiary, and
- subsection 261(4) is deemed not to apply to the subsidiary for each taxation year of the subsidiary beginning after the end of the subsidiary's deemed last functional currency year. Consequently, those years will be Canadian currency years of the subsidiary.

Amalgamations – effect on predecessor corporations

ITA
261(13) & (14)

Proposed subsections 261(13) and (14) of the Act deal with situations where a corporation, in a functional currency year of the corporation, amalgamates with another corporation.

Proposed subsection 261(13) provides that subsection 261(14) will apply to a corporation (the "specified predecessor") that has merged with one or more other corporations to form one corporate entity (the "new corporation") if

- the merger was an amalgamation within the meaning assigned by subsection 87(1),
- the taxation year of the specified predecessor (the "last taxation year of the specified predecessor") that ended immediately before the amalgamation would, were section 261 read without reference to subsection 261(14), be a functional currency year of the specified predecessor, and
- either
    - where the taxation year of the new corporation (the "first taxation year of the new corporation") that commenced at the time of the amalgamation was a functional currency year of the new corporation, the functional currency of the new corporation for the first taxation year of the new corporation was not the functional currency of the specified predecessor for the last taxation year of the specified predecessor, or
    - the first taxation year of the new corporation was not a functional currency year of the new corporation.

Proposed subsection 261(14) provides that, where it applies to the specified predecessor, for the purposes of section 261

- the taxation year of the specified predecessor that ends immediately before the beginning of the last taxation year of the specified predecessor is deemed to be the last functional currency year of the specified predecessor, and
- subsection 261(4) is deemed not to apply to the specified predecessor corporation for each taxation year of the specified predecessor beginning after the end of the specified predecessor's deemed last functional currency year. Consequently, those years will be Canadian currency years of the specified predecessor.

Deemed continuation on winding-up or amalgamation

ITA
261(15), (16) and (17)

Proposed subsection 261(15) provides that, for the purposes of section 261, after a winding-up (to which subsection 88(1) has applied) or an amalgamation (within the meaning assigned by subsection 87(1)), as the case may be, the parent or the successor corporation is deemed to be a continuation of the subsidiary or the predecessor corporation, as the case may be. This deemed continuation is subject to proposed subsections 261(16) and (17).

Proposed subsection 261(16) provides that, where the parent would not, in a taxation year of the parent ending after the time the subsidiary was wound up, satisfy the requirements of paragraph 261(3)(*e*) because the last functional currency year of the subsidiary referred to in proposed subsection 261(12) in respect of the winding-up is, because of proposed paragraph 261(15)(*a*), the last functional currency year of the parent, paragraph 261(15)(*a*) will not apply, for the purposes of paragraph 261(3)(*e*), to the parent in respect of the subsidiary if the total of all amounts each of which is the cost amount, at the end of the taxation year of the parent in which the property of the subsidiary was distributed to the parent in the course of winding-up, to the parent of a property of the parent that was distributed to the parent on the winding-up (or property substituted for such property) is less than 50 per cent of the total of all amounts each of which is the cost amount, at the end of that taxation year, to the parent of a property of the parent.

Proposed subsection 261(17) provides that, where the new corporation would not, in a taxation year of the new corporation commencing on or after the time of the amalgamation, satisfy the requirements of paragraph 261(3)(*e*) because the last functional currency year of the predecessor referred to in subsection 261(14) in respect of the amalgamation is, because of paragraph 261(15)(*b*) the last functional currency year of the new corporation, paragraph 261(15)(*b*) shall not apply, for the purposes of paragraph 261(3)(*e*), to the new corporation in respect of the predecessor if the total of all amounts each of which is the cost amount, at the end of the taxation year of the new corporation that began at the time of the amalgamation, to the new corporation of a property of the new corporation that, immediately before the amalgamation, was a property of the predecessor corporation (or property substituted for such property) is less than 50 per cent of the total of all amounts each of which is the cost amount, at the end of that taxation year of the new corporation, to the new corporation of a property of the new corporation.

Anti-avoidance

ITA
261(18)

Proposed subsection 261(18) provides a rule that prevents against the transferring of the assets of a business from one corporation to another in order to avoid the application of proposed paragraph 216(3)(*e*). In such a case, the corporation acquiring the assets is deemed, for the purposes of section 261, to be the same corporation as the transferor.

Authority to designate stock exchange

ITA
262

New section 262 forms part of the replacement of the existing concept of "prescribed stock exchange", currently used for various purposes under the Act, with three new categories of stock exchange:

- "designated stock exchange" – a new definition under subsection 248(1);
- "recognized stock exchange" – a new definition under subsection 248(1); and
- "stock exchange" – an undefined term to which the generally accepted legal and commercial meaning is intended to apply

Currently, sections 3200 and 3201 of the Regulations list the stock exchanges inside and outside Canada that are prescribed for various purposes of the Act. For example, whether a particular share is taxable Canadian property, a qualified investment for registered retirement savings plans, or a qualified security for the purposes of the rules applying to securities lending arrangements, may depend upon whether the share is listed on a prescribed stock exchange.

Most of the provisions in the Act that now refer to "prescribed stock exchange" are amended to refer to "designated stock exchange". New section 262 provides the mechanism for the Minister of Finance to designate stock exchanges for the purposes of the Act.

Subsections 262(1) and (2) provide the authority for the Minister to designate a stock exchange or part of a stock exchange for the purposes of the Act, and to revoke such a designation. Subsection (3) requires the Minister to specify the time at and after which the designation or revocation is in effect, and provides authority for a designation or revocation to have retroactive effect.

Subsection 262(4) requires the Minister to cause to be published on the Department of Finance website, or by any other means that the Minister considers appropriate, the names of stock exchanges, or parts of stock exchanges, that are, or previously were, designated.

Subsection 262(5) provides a transitional rule, pursuant to which the Minister is deemed to have designated each stock exchange, and each part of a stock exchange, that was prescribed under either section 3200 or 3201 of the Regulations immediately before the day of coming into force of section 262. These deemed designations take effect on the day on which new section 262 comes into force, thus ensuring a seamless transition from the existing list of prescribed stock exchanges to the new category of designated stock exchanges.

New section 262 applies on and after the day on which Royal Assent is given to the amending bill.
The Department of Finance is developing a note that explains the new process through which a candidate stock exchange can apply to the Minister for designation. The note will be released shortly after Royal Assent for public comment.

The designation of a stock exchange by the Minister is intended to apply only for the various purposes specified under the Act; it must not be construed as an endorsement by the Minister, the Department of Finance, or the Government of Canada of the exchange generally or of the securities listed on the exchange.

Clause 55

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITA
Various references

These clauses amend various provisions of the Act consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange", as explained in more detail under the notes to new section 262. These amendments update the language of the provisions but are not intended to alter their substantive effect. The amendments apply on and after the day on which the amending bill receives Royal Assent. The provisions of the Act amended by these clauses are the following:

- subparagraphs 7(9)(*d*)(i) and (ii);
- subparagraph 13(27)(*f*)(i);
- paragraph (e) of the definition "Canadian newspaper" in subsection 19(5);
- subparagraph 38(*a*.1)(i);
- subparagraph 48.1(1)(*a*)(ii);
- paragraphs (*b*) and (*c*) of the definition "qualified person" in subsection 55(1);
- subsection 55(6);

- paragraph (*b*) of the definition "excluded security" in subsection 80(1);
- clause (*c*)(ii)(A) and subparagraph (*d*)(ii) of subsection 86.1(2);
- subsection 87(4.3) and paragraphs 87(9)(*a*.2) and (10)(*e*);
- paragraph (a) of the definition "public corporation" in subsection 89(1);
- the definitions "arm's length transfer" and "excluded property" in subsection 94(1);
- the definitions "arm's length interest" and "exempt interest" in subsection 94.1(1);
- the definitions "readily obtainable fair market value" and "trading day" in subsection 94.2(1);
- paragraph 94.2(2)(*b*);
- subparagraph 108(2)(*b*)(vi);
- subsection 110.1(6);
- paragraph 112(2.21)(*c*);
- clauses (*a*)(i)(A) and (B) of the definition "qualified investment" in subsection 115.2(1);
- paragraphs 118.1(18)(*a*), (*b*) and (*c*);
- subparagraphs (*a*)(i) and (ii) and clauses (*c*)(ii)(A) and (B) of the definition "split income" in subsection 120.4(1);
- paragraph (*c*) of the definition "Canadian-controlled private corporation" in subsection 125(7);
- subsection 137(4.1);
- the portion of subsection 141(5) before paragraph (*a*);
- paragraph (*b*) of the definition "non-qualified investment" in subsection 149.1(1);
- the portion of paragraph 187.3(2)(*d*) before subparagraph (*d*)(i);
- subparagraphs (*c*)(i) and (ii), and paragraph (*d*) of the definition "qualified investment" in section 204;
- subsection 207.1(5);
- subsection 207.5(2);
- paragraph (*a*) of the definition "Canadian property mutual fund investment" in subsection 218.3(1);
- the portion of paragraph (*d*) before subparagraph (i) in the definition "grandfathered share" in subsection 248(1);
- paragraphs (*d*) to (*f*) of the definition "taxable Canadian property" in subsection 248(1); and
- paragraph (*d*.1) of the definition "term preferred share" in subsection 248(1).

Income Tax Application Rules

Clause 56

Certificates of exemption

ITAR
10(5)

Current subparagraph 212(1)(*b*)(iv) of the *Income Tax Act* exempts from tax under Part XIII of that Act payments of interest to non-resident persons who hold "certificates of exemption" issued under subsection 212(14) of that Act and who deal at arm's length with the payer of the interest. ITAR subsection 10(5) provides for the continuing validity of certificates issued under the previous version of the *Income Tax Act*.

With the general exemption of all interest paid by persons in Canada to arm's length non-residents, these certificates will no longer be necessary, and subsection 10(5) is repealed. This measure will apply when the Canada-U.S. tax treaty generally removes source-country tax from cross-border payments of arm's length interest.

Income Tax Conventions Interpretation Act

Clause 57

Stock exchanges

ITCTA
4.2

New section 4.2 is added to the *Income Tax Conventions Interpretation Act*, to ensure that each reference in any of Canada's tax treaties to a stock exchange that is prescribed under, or for the purposes of, the *Income Tax Act* is read as a reference to a designated stock exchange as defined under that Act. This amendment, which applies on and after the amending bill receives Royal Assent, is consequential to the replacement of the concept of "prescribed stock exchange" by the new category of "designated stock exchange" under the *Income Tax Act*.

Clause 58

Remittance – quarterly basis

ITR
108(1.12)

Subsection 153(1) of the *Income Tax Act* (the Act) authorizes the withholding of tax from payments described in that subsection. Subsection 21(1) of the *Canada Pension Plan Act* and subsection 82(1) of the *Employment Insurance Act* authorize the deduction of employee contributions and the deduction of employee premiums respectively for any period in which remuneration is paid.

An employer is required to remit the amounts withheld or deducted to the Receiver General on behalf of its employees. The amount of tax withholdings, as well as employee and employer contributions and premiums payable, must be remitted on or before specific dates. Currently an employer with an average monthly withholding amount of less than $1,000 for the first or the second preceding calendar year, and who has no compliance irregularities for the preceding 12 months, can remit on a quarterly basis, instead of on a monthly basis. For this purpose, the average monthly withholding amount is described in subsection 108(1.2) of the *Income Tax Regulations* (the Regulations).

Subsection 108(1.12) of the Regulations is amended to ensure that an employer with an average monthly withholding amount of less than $3,000 (instead of $1,000) for the first or the second preceding calendar year, and who has no compliance irregularities for the preceding 12 months, can remit on a quarterly basis, instead of on a monthly basis.

Subsection 108(1.12) of the Regulations is amended in two respects. First, a reference in paragraph 108(1.12)(*a*) to the average monthly withholding amount of $1,000 is changed to "$3,000." Second, paragraph 108(1.12)(*b*) is rewritten to simply the provision and by combining the requirements in subparagraphs 108(1.12)(*b*)(i) and (ii) into paragraph (*b*). These amendments to subsection 108(1.12) apply in respect of amounts required to be deducted or withheld after 2007.

Clause 59

Stock exchanges

ITR
3200 and 3201

Currently, sections 3200 and 3201 of the Regulations list the stock exchanges inside and outside Canada that are prescribed for various purposes of the Act. For example, whether a particular share is taxable Canadian property, a qualified investment for registered retirement savings plans, or a qualified security for the purposes of the rules applying to securities lending arrangements, may depend upon whether the share is listed on a prescribed stock exchange.

The concept of "prescribed stock exchange" is now being replaced with three new categories of stock exchange:

- "designated stock exchange", as defined under subsection 248(1);
- "recognized stock exchange", as defined under subsection 248(1); and
- "stock exchange", an undefined term to which the generally accepted legal and commercial meaning is intended to apply.

The process of prescription under the Regulations is also replaced, with a new process whereby the Minister of Finance will designate stock exchanges for the purposes of the Act. New section 262 provides authority for the Minister to so designate stock exchanges.

The designation of a stock exchange by the Minister is intended to apply only for the various purposes specified under the Act; it must not be construed as an endorsement by the Minister, the Department of Finance, or the Government of Canada of the exchange generally or of the securities listed on the exchange.

The amendments giving effect to the new categories of stock exchange come into force on the day on which the amending bill receives Royal Assent. As of that time, sections 3200 and 3201 will no longer be necessary, and are therefore repealed with effect on that day.

A transitional rule in new subsection 262(5) provides that the Minister is deemed to have designated each stock exchange, and each part of a stock exchange, that was prescribed under either section 3200 or 3201 of the Regulations immediately before the day of coming into force of section 262. These deemed designations take effect on the day on which section 262 comes into force, thus ensuring a seamless transition from the existing list of prescribed stock exchanges to the new category of designated stock exchanges.

A number of changes are also made to section 3201 of the Regulations, effective on the day immediately before the day on which the repeal of sections 3200 and 3201 takes effect (or earlier, where noted). These changes update the names of the stock exchanges that are prescribed in section 3201, so that the names are current at the time when the deemed designations under subsection 262(5) take effect. These changes to section 3201 are the following:

- the reference to "the Australian Stock Exchange" in paragraph (*a*) is replaced with a reference to "the Australian Securities Exchange";
- the reference to "the Brussels Stock Exchange" in paragraph (*b*) is replaced with a reference to "Euronext Brussels";
- the reference to "the Paris Stock Exchange" in paragraph (*c*) is replaced with a reference to "Euronext Paris";
- the reference to "the Amsterdam Stock Exchange" in paragraph (*i*) is replaced with a reference to "Euronext Amsterdam";
- the reference to "the Zurich Stock Exchange" in paragraph (*m*) is replaced with a reference to "the SWX Swiss Exchange" and this change is deemed to have come into force on January 1, 2007;
- the reference to "the Cincinnati Stock Exchange" in subparagraph (*o*)(v) is replaced with a reference to "the National Stock Exchange";
- subparagraph (*o*)(vi), which refers to the Intermountain Stock exchange, is repealed since the exchange is no longer operational;
- the reference to "the Midwest Stock Exchange" in subparagraph (*o*)(vii) is replaced with a reference to "the Chicago Stock Exchange";
- the reference to "the Pacific Stock Exchange" in subparagraph (*o*)(x) is replaced with a reference to "NYSE Arca" and this change is deemed to have come into force on April 1, 2006; and
- the reference to the Spokane Stock Exchange under subparagraph (*o*)(xii) is deleted, as the exchange is no longer operational.

For greater clarity, the updated names of stock exchanges which will be deemed pursuant to new subsection 262(5) to be "designated stock exchanges" effective on the day on which the amending bill receives Royal Assent, are set out in the following table. The Government invites comments from interested parties on the above name changes.

Table
Designated Stock Exchanges

Country	Exchange
Canada	Montreal Stock Exchange
Canada	Tiers 1 and 2 of the TSX Venture Exchange
Canada	Toronto Stock Exchange
Australia	Australian Securities Exchange
Austria	Vienna Stock Exchange
Belgium	Euronext Brussels
Denmark	Copenhagen Stock Exchange
Finland	Helsinki Stock Exchange
France	Euronext Paris
Germany	Frankfurt Stock Exchange
Hong Kong	Hong Kong Stock Exchange
Ireland	Irish Stock Exchange
Israel	Tel Aviv Stock Exchange
Italy	Milan Stock Exchange
Japan	Tokyo Stock Exchange
Luxembourg	Luxembourg Stock Exchange
Mexico	Mexico City Stock Exchange
Netherlands	Euronext Amsterdam
New Zealand	New Zealand Stock Exchange
Norway	Oslo Stock Exchange
Poland	The main and parallel markets of the Warsaw Stock Exchange
Singapore	Singapore Stock Exchange
South Africa	Johannesburg Stock Exchange
Spain	Madrid Stock Exchange
Sweden	Stockholm Stock Exchange
Switzerland	SWX Swiss Exchange
United Kingdom	London Stock Exchange
United States	American Stock Exchange
United States	Boston Stock Exchange
United States	Chicago Board of Options
United States	Chicago Board of Trade
United States	Chicago Stock Exchange
United States	National Association of Securities Dealers Automated Quotation System
United States	National Stock Exchange
United States	New York Stock Exchange
United States	NYSE Arca
United States	Philadelphia Stock Exchange

Clauses 60 to 62

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITR
Various references

These clauses amend various provisions of the Regulations consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange", and the repeal of sections 3200 and 3201 of the Regulations, as explained in more detail under the notes to those sections. These amendments to the Regulations, which take effect on the day on which the amending bill receives Royal Assent, are the following:

- the definition "prescribed stock exchange" in section 3700 is repealed;
- the language of sections 3702 and 8514 is updated to refer to "designated stock exchange"; and
- the language of sections 4800, 4900, and 6201 is updated to refer to "designated stock exchange in Canada".

Clause 63

Term preferred share and taxable RFI share

ITR
6201(5) and (5.1)

Subsection 6201(5) and (5.1) of the Regulations prescribe certain shares held by securities dealers as shares that are excluded from being "term preferred shares" and "taxable RFI shares". One of the requirements for the exclusion to apply to a share is that it be held as inventory of the business ordinarily carried on by the securities dealer. This requirement is replaced by a requirement that the share be held for the purpose of sale in the course of the business ordinarily carried on by the securities dealer. This amendment, which was released as a draft regulation on June 1, 1995, is made as a consequence of the introduction of subsection 142.6(3) of the Act, which provides that certain property held by a financial institution is considered not to be inventory. The new requirement is intended to be the same, in substance, as the former requirement.

The amendments to subsections 6201(5) and (5.1) apply to dividends received in taxation years that begin after October 1994. The language of the two subsections is also updated, consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange", and the repeal of sections 3200 and 3201 of the Regulations, as explained in more detail under the notes to those sections, effective on the day on which the amending bill receives Royal Assent.

Clause 64

Northern Residents Deduction

ITR
7303.1(1)

Individuals who live in prescribed areas in northern Canada for at least 6 consecutive months in a year may claim the northern resident deduction for that year under section 110.7 of the Act.

Subsection 7303.1(1) of the Regulations describes those areas of northern Canada.

Paragraph 7303.1(1)(*a*) is amended to add a reference to Nunavut. This amendment applies after March 31, 1999, which is the date Nunavut was created.

Budget 2007 includes the District Municipality of Mackenzie in British Columbia in the area of Canada eligible for the northern resident deduction. Paragraph 7303.1(2)(*a*) is therefore amended to extend the intermediate zone boundary to north of 55°13'N latitude and east of 123°16'W longitude.

This amendment applies for the 2007 and subsequent taxation years.

Clause 65

"prescribed trades"

ITR
7310

The Regulations are amended by adding new section 7310, consequential to the introduction in 2006 of the Apprenticeship Job Creation Tax Credit.

The definition "eligible apprentice" in subsection 127(9) of the Act defines an eligible apprentice to be an individual who is employed in Canada in a trade prescribed in respect of a province or Canada, during the first twenty-four months of the individual's apprenticeship contract. The apprenticeship contract is generally required to be registered with the province or Canada under an apprenticeship program designed to certify or license the individual in a trade.

New section 7310 of the Regulations defines a prescribed trade in respect of a province to mean a trade that is, at any time in that taxation year, approved as a Red Seal trade under the Interprovincial Standards Red Seal program for the province. This amendment applies to taxation years ending on or after May 2, 2006.

Clause 66

Past service pension adjustment – normalized pension

ITR
8303(5)

Subsection 8303(5) of the Regulations provides rules for determining past service pension adjustments (PSPAs), which reduce RRSP deduction room. The rules set out in paragraphs 8303(5)(*f.1*) and (*f.2*) make reference to designated plans as defined in section 8515.

Paragraphs 8303(5)(*f.1*) and (*f.2*) are amended to eliminate the reference in those paragraphs to section 8515. These amendments are strictly consequential to the introduction of the definition "designated plan" in subsection 8500(1), which applies for the purposes of all of Parts LXXXIII and LXXXV of the Regulations. These amendments apply after 2007.

Clause 67

Interpretation

ITR
8500(1)

Subsection 8500(1) of the Regulations defines a number of expressions that apply for the purposes of Part LXXXV. By virtue of subsection 8300(3), the definitions also apply for the purposes of Part LXXXIII.

Subsection 8500(1) is amended to add the definition "designated plan", which has the meaning assigned by existing section 8515. This amendment is intended to improve readability and is consequential to the introduction of several provisions in section 8503 that incorporate the expression "designated plan". This amendment applies after 2007.

ITR
8500(2)

Subsection 8500(2) of the Regulations provides that the definitions in subsection 147.1(1) of the Act also apply for the purposes of Part LXXXV.

Subsection 8500(2) is amended to provide that the definitions in subsection 8300(1) also apply for the purposes of Part LXXXV. This amendment is consequential to the introduction of several provisions in section 8503 that incorporate the expression "past service event", which is defined in subsection 8300(1). This amendment applies after 2007.

Clause 68

Permissible benefits

ITR
8503

Section 8503 of the Regulations describes the benefits that may be provided under a defined benefit provision of a registered pension plan (RPP) and contains conditions that apply to a plan that has a defined benefit provision.

Eligible service

ITR
8503(3)(*a*)

Paragraph 8503(3)(*a*) of the Regulations restricts the lifetime retirement benefits that may be provided to a member under a defined benefit provision of an RPP to benefits that are provided in respect of certain periods of service.

Paragraph 8503(3)(*a*) is amended to clarify, for greater certainty, that a member's eligible service may not include any portion of a period that is after the calendar year in which the member attains 71 years of age (which is the pension commencement deadline in paragraph 8502(*e*)). This amendment is consequential to the introduction of subsection 8503(19), which allows for continued defined benefit accruals after pension commencement. The provision is also consistent with a similar restriction on contributions under a money purchase provision in paragraph 8506(2)(*c.1*). This amendment applies to benefits that are provided or payable after 2007.

Re-employed member

ITR
8503(9)

Subsection 8503(9) of the Regulations contains rules that apply with respect to the retirement benefits payable under a defined benefit provision of an RPP to a member who becomes re-employed after commencing to receive retirement benefits. As long as payment of the member's benefits is suspended during the period of re-employment, subsection 8503(9) permits the member to accrue additional benefits in respect of the period of re-employment. It also allows the member's benefits to be redetermined in other ways and modifies certain conditions in subsections 8503(2) and (3) and section 8504 to accommodate the benefit redetermination.

Several provisions in Part LXXXIII (pension adjustments, past service pension adjustments, pension adjustment reversals), as well paragraph 8503(2)(*m*) (commutation of benefits) and subsection 8517(4) (maximum transfer limit), depend on whether retirement benefits had commenced to be paid. Subsection 8503(9) is amended to add a new rule in paragraph (*g*) to clarify that these provisions apply throughout the period in which the benefits of a re-employed member are suspended as if the member's benefits had not previously commenced to be paid. This will ensure that these provisions apply in an appropriate manner. For example, it will ensure that the PSPA relief provided under paragraphs 8303(5)(*f*) to (*f.2*) for benefit increases arising from the increase in a plan's maximum pension limit will be available for re-employed members, despite the fact their benefits had previously commenced to be paid. (Paragraphs 8303(5)(*f*) to (*f.2*) generally do not apply after retirement benefits have commenced to be paid.)

The rule in paragraph 8503(9)(*g*) is similar to rules in new paragraphs 8503(18)(*b*) and (21)(*b*) that apply for purposes of the new provisions relating to phased retirement. This amendment applies to benefits that are provided or payable after 2007.

Definitions

ITR
8503(16)

New subsections 8503(16) to (25) of the Regulations set out rules relating to phased retirement and other older-worker retention programs. In general terms, these rules enable a defined benefit RPP to provide for qualifying employees to receive bridging benefits on a stand-alone basis or to receive up to 60 per cent of their accrued pension while accruing further pension benefits.

Subsection 8503(16) defines the expressions "specified eligibility day" and "qualifying period" for the purposes of these rules. These definitions apply to benefits that are provided or payable after 2007.

"specified eligibility day"

The "specified eligibility day" of a member under a defined benefit provision of a pension plan represents the earliest day on which the plan may provide for the member to receive bridging benefits, or to accrue additional benefits, in accordance with subsection 8503(17) or (19), respectively.

A member's specified eligibility day is generally the day the member turns 60 years of age. However, if a member is entitled to an unreduced pension before age 60, it can be as early as the day the member turns 55 years of age. More specifically, in this situation, a member's specified eligibility day is the later of the day the member turns 55 years of age and the earliest day on which the member may commence to receive their lifetime retirement benefits under the provision without the plan imposing a reduction on account of early retirement.

"qualifying period"

The expression "qualifying period" of a member under a defined benefit provision of a pension plan represents the period in respect of which the plan may provide for the member to accrue additional benefits in accordance with subsection 8503(19).

In general terms, a qualifying period of a member is a period of post-pension commencement employment. The period cannot begin any earlier than the member's "specified eligibility day". For more details, refer to the commentary on subsection 8503(19).

Bridging benefits payable on a stand-alone basis

ITR
8503(17)

New subsection 8503(17) of the Regulations enables an RPP to provide for the payment of bridging benefits under a defined benefit provision of the plan on a stand-alone basis (i.e., without the simultaneous payment of lifetime retirement benefits). This provision is intended to allow a defined benefit RPP to provide for a qualifying member who continues in employment to receive the bridging benefits that would have been payable if the member had retired and commenced to receive their full pension. Additional rules relating to subsection 8503(17) are set out in subsections 8503(18) and (23) to (25) and in subparagraph 8507(3)(*a*)(vii). Subsections (19) to (22) are also relevant if the member accrues additional benefits while in receipt of the stand-alone bridging benefits.

By virtue of the condition in subparagraph 8503(2)(*b*)(i), bridging benefits must not commence to be paid unless lifetime retirement benefits have commenced to be paid. Subsection 8503(17) provides that this condition does not apply with respect to the payment of bridging benefits to a member if several conditions are satisfied.

First, payment of the bridging benefits cannot commence before the member's "specified eligibility day" under the provision. This expression is defined in subsection 8503(16) as the earlier of

- the day the member turns 60 years of age; and

- the later of the day the member turns 55 years of age and the earliest day on which the member may commence to receive their lifetime retirement benefits under the provision without the plan imposing a reduction on account of early retirement.

Second, the plan must provide that bridging benefits are payable to the member only for months in which the member is employed by a participating employer or for months that begin on or after the time that the member's lifetime retirement benefits commence to be paid. This means that payment of the bridging benefits would have to be suspended in the event the member ceases to be employed by a participating employer (other than because the member retires and commences to receive their full pension). Payment of the bridging benefits could resume once the member's lifetime retirement benefits commence to be paid.

Finally, subsection 8503(17) does not apply to designated plans or persons who are (or have been) connected with a participating employer. The meanings of the expressions "designated plan" and "person connected with an employer" are set out in subsections 8500(1) and (3), respectively.

Subsection 8503(17) applies to benefits that are provided or payable after 2007.

Rules of application

ITR
8503(18)

New subsection 8503(18) of the Regulations contains two special rules that apply where bridging benefits (which are, by definition, retirement benefits) are paid on a stand-alone basis to a member in accordance with subsection 8503(17). These rules modify the application of certain provisions in Parts LXXXIII and LXXXV of the Regulations that depend on whether retirement benefits had commenced to be paid. Essentially, subsection 8503(18) provides that, in applying these provisions with respect to such a member, the payment of the stand-alone bridging benefits is to be ignored.

Paragraph 8503(18)(*a*) applies where a member who has received stand-alone bridging benefits dies before starting to receive their lifetime retirement benefits. It allows the plan to provide for benefits payable on the death of the member to be determined as if the stand-alone bridging benefits had not been paid. Thus, for example, the limits on guarantee periods can be determined without regard to the time at which the stand-alone bridging benefits commenced to be paid to the member. In the absence of this rule, a guarantee period would have to begin on the day the stand-alone bridging benefits commenced to be paid.

Paragraph 8503(18)(*b*) provides a similar disregard for purposes of applying the following provisions that depend on whether the member's retirement benefits had previously commenced to be paid: Part LXXXIII (pension adjustments, past service pension adjustments, pension adjustment reversals); paragraph 8503(2)(*m*) (commutation of benefits) and subsection 8517(4) (maximum transfer limit). This will ensure that these provisions apply in an appropriate manner. For example, it will ensure that the PSPA relief provided under paragraphs 8303(5)(*f*) to (*f.2*) for benefit increases arising from the increase in a plan's maximum pension limit will be available for members who are receiving stand-alone bridging benefits. (Paragraphs 8303(5)(*f*) to (*f.2*) generally do not apply after retirement benefits have commenced to be paid.)

These rules are similar to rules in subsections 8503(9) and 8503(21). They apply to benefits that are provided or payable after 2007.

Benefit accruals after pension commencement

ITR
8503(19)

Existing paragraph 8503(3)(*b*) of the Regulations prohibits the continued accrual of benefits under a defined benefit provision of an RPP once a member's pension commences to be paid. This prohibition also applies on a cross-plan basis where an employer who participates in a plan also participates (or does not deal at arm's length with an employer who participates) in another plan.

New subsection 8503(19) is introduced to allow a defined benefit RPP to provide for qualifying employees to receive up to 60 per cent of their accrued pension while at the same time accruing further pension benefits. This provision will provide more flexibility to employers in designing phased retirement and other older worker retention programs in connection with their defined benefit RPP. For example, it will enable employers to offer phased retirement programs to allow older employees to continue working on a part-time basis, while at the same time receiving a partial pension and accruing further pension benefits in respect of their part-time work. It will also enable employers to increase the reward for full-time work by paying a partial pension to older employees who wish to continue in employment on a full-time basis. There is no requirement that the partial pension be based on a reduction in work time or that there be a corresponding reduction in salary.

Subsection 8503(19) provides that the prohibition on post-pension commencement accruals in paragraph 8503(3)(*b*) does not apply to retirement benefits (referred to as "additional benefits") provided under a defined benefit provision of an RPP to a member of the plan where the following conditions are met:

- the additional benefits accrue only in respect of a "qualifying period" of the member;
- the amount of retirement benefits payable to the member for each month in the "qualifying period" does not exceed 60 per cent of the monthly amount of retirement benefits accrued to the member to the beginning of the month (determined without any early retirement reduction);
- the additional benefits accrue on a current service basis; and
- the plan is not a "designated plan" and the member was not "connected with an employer" who participates in the plan (the meanings of those expressions are set out in subsections 8500(1) and (3), respectively).

Subsection 8503(16) defines, for this purpose, the expression "qualifying period" of a member under a defined benefit provision of a pension plan. It is a period, commencing no earlier than the member's "specified eligibility day" (as defined in subsection 8503(16)) under the provision, throughout which the member is employed by an employer who participates in the plan. Periods of employment that are before the day in respect of which the member first begins accruing additional benefits under the provision following pension commencement are excluded from the definition. The conditions in this definition serve several purposes.

The requirement that a qualifying period not begin any earlier than the member's specified eligibility day ensures that the provision is targeted to those employees who have the strongest incentive to retire (i.e., employees who are at least 60 years of age and employees who are eligible to receive an unreduced pension and at least 55 years of age). The employment condition and the exclusion of periods before the member begins to simultaneously accrue and receive benefits are relevant for purposes of applying the 60 per cent limit. The former condition ensures that members can receive 100 per cent of their pension once they retire. The latter condition ensures that the 60 per cent limit does not disqualify an employee who had previously been receiving 100 per cent of their pension but who subsequently agrees to a reduction in their pension to 60 per cent in exchange for resumption in benefit accruals.

The 60 per cent limit does not apply to any month after which benefits cease to accrue to the member because of a limit on pensionable service (such as a 35-year cap) or a prohibition on the provision of benefits after attainment of a specific age (such as age 71) or combination of age and service. This ensures that a member who continues in employment beyond their plan's age or service limit (and thus is no longer eligible to accrue further benefits) will not be prevented from receiving 100 per cent of their accrued pension from that time.

Subsection 8503(19) allows additional benefits to be provided for post-pension commencement employment only if the benefits are provided on a current service basis. However, this prohibition will not prevent benefits that accrue in respect of post-pension commencement employment from being increased, as long as the increase gives rise to a nil PSPA (such as an increase resulting from updating the pensionable earnings base). In determining whether a PSPA is nil for this purpose, qualifying transfers are to be disregarded. Nor will it prevent broad-based benefit improvements that give rise to a non-zero PSPA that is exempt from certification under subsection 8306(1) of the Regulations.

Additional rules relating to subsection 8503(19) are set out in subsections 8503(20) to (25) and in subparagraph 8507(3)(*a*)(vii).

Subsection 8503(19) applies to benefits that are provided or payable after 2007.

Redetermination of benefits

ITR
8503(20)

New subsection 8503(20) of the Regulations contains a relieving rule that applies where a member's retirement benefits under a defined benefit provision of an RPP are redetermined to include additional accruals after pension commencement in accordance with subsection 8503(19). Subsection 8503(20) is qualified by an anti-avoidance rule in subsection 8503(22).

Subsection 8503(20) provides that the bridging benefit limits in paragraph 8503(2)(*b*) and the maximum pension limits in section 8504 apply with respect to the member's retirement benefits that are payable after the redetermination as if the member's benefits had first commenced to be paid at the time of the redetermination. This would allow, for example, a recalculation of any bridging benefit reduction to take into account the member's age and service at the date of redetermination or a recalculation of the maximum pension limit to take into account the current defined benefit limit.

Several existing exceptions to the equal periodic rule in paragraph 8503(2)(*a*) of the Regulations are also relevant to benefit redeterminations occurring in these circumstances. Subparagraph 8503(2)(*a*)(iv) allows the member's retirement benefits to be increased to include the additional benefits accrued during the qualifying period. Subparagraph 8503(2)(*a*)(v) allows the member's retirement benefits to be redetermined to reduce or eliminate the portion of an early retirement reduction that was not required to be applied in order to comply with the early retirement rules in paragraph 8503(3)(*c*). Subparagraph 8503(2)(*a*)(ix) accommodates the payment of the partial pension to the member during the qualifying period by allowing the pension of a member who is in receipt of remuneration to be less than it would otherwise be if the member were retired.

Subsection 8503(20) applies to benefits that are provided or payable after 2007.

Rules of application

ITR
8503(21)

New subsection 8503(21) of the Regulations contains two special rules that apply where a member accrues additional benefits in respect of a qualifying period (i.e., a period of post-pension commencement employment) in accordance with subsection 8503(19). These rules modify the application of certain provisions in Parts LXXXIII and LXXXV of the Regulations that depend on whether retirement benefits had commenced to be paid. Essentially, subsection 8503(21) provides that, in applying these provisions with respect to such a member, the payment of the partial pension is to be ignored. Subsection 8503(21) is qualified by an anti-avoidance rule in subsection 8503(22).

Paragraph 8503(21)(*a*) applies where the member dies during the qualifying period. It allows the plan to provide for benefits payable on the death of the member to be determined as if the partial pension had not been paid. Thus, for example, the limits on guarantee periods can be determined without regard to the time at which the partial pension commenced to be paid to the member. In the absence of this rule, a guarantee period would have to begin on the day the partial pension commenced to be paid.

Paragraph 8503(21)(*b*) provides a similar disregard for purposes of applying the following provisions that depend on whether the member's retirement benefits had previously commenced to be paid: Part LXXXIII (pension adjustments, past service pension adjustments, pension adjustment reversals); paragraph 8503(2)(*m*) (commutation of benefits) and subsection 8517(4) (maximum transfer limit). This will ensure that these provisions apply in an appropriate manner. For example, it will ensure that the PSPA relief provided under paragraphs 8303(5)(*f*) to (*f.2*) for benefit increases arising from the increase in a plan's maximum pension limit will be available for members who are receiving a partial pension. (Paragraphs 8303(5)(*f*) to (*f.2*) generally do not apply after retirement benefits have commenced to be paid.) Paragraph 8503(21)(*b*) applies only during the qualifying period.

These rules are similar to rules in subsections 8503(9) and 8503(18). They apply to benefits that are provided or payable after 2007.

Anti-avoidance

ITR
8503(22)

New subsection 8503(22) of the Regulations is an anti-avoidance rule that denies the application of subsections 8503(20) and (21) where it can be shown that one of the main reasons for the provision of additional benefits was to enable the member to benefit from the specials rules in those two subsections. This is intended, for example, to prevent the provision of nominal benefits to a member after pension commencement so that the amount of the member's accrued pension can be redetermined to reflect the current defined benefit limit or so that the guarantee period on the member's benefits can be extended.

Subsection 8503(22) applies to benefits that are provided or payable after 2007.

Cross-plan rules

ITR
8503(23)

New subsection 8503(23) of the Regulations contains three rules that apply where an individual is entitled to benefits under two or more associated defined benefit provisions. The rules are relevant in determining whether certain conditions in subsection 8503(17) (stand-alone bridging benefits) and subsection 8503(19) (benefit accruals after pension commencement) are met in respect of benefits provided under a particular associated provision. In general terms, the rules treat the associated provisions as being a single provision. New subsection 8503(24) defines associated provisions for this purpose.

Paragraph 8503(23)(*a*) is relevant in determining whether the benefits payable to a member under a particular defined benefit provision comply with the 60 per cent limit in paragraph 8503(19)(*b*). It provides that all benefits payable to the member under associated defined benefit provisions are to be assumed to be payable under the particular provision.

Paragraph 8503(23)(*b*) provides that if a member under a particular defined benefit provision had previously commenced to receive their retirement benefits under an associated provision on or after the member's "specified eligibility day" under the associated provision, the member's "specified eligibility day" under the particular provision is assumed to be that earlier day.

The following example illustrates the application of paragraphs 8503(23)(*a*) and (*b*).

Example

At age 57, David retires after a long career at ABC and begins receiving his full unreduced pension. Six months later, David decides to return to the workforce and is hired by XYZ, which is related to ABC. While XYZ sponsors a defined benefit RPP, David is unable to participate because of the cross-plan prohibition on post-pension commencement accruals in paragraph 8503(3)(b). However, by virtue of paragraph 8503(23)(b), David is entitled to use his "specified eligibility day" under ABC's plan for purposes of satisfying the conditions in subsection 8503(19) in connection with XYZ's plan. After arranging with ABC to have his pension reduced to 60%, David is entitled to begin accruing pension benefits under XYZ's plan.

Paragraph 8503(23)(*c*) provides that if one or more of the associated provisions is contained in a designated plan, it is assumed that all of the associated provisions are in designated plans.

Subsection 8503(23) applies to benefits that are provided or payable after 2007.

Associated defined benefit provisions

ITR
8503(24) and (25)

New subsection 8503(24) of the Regulations specifies when one defined benefit provision is considered to be associated with another defined benefit provision for the purpose of subsection (23).

Defined benefit provisions that are in the same pension plan are always associated. Defined benefit provisions in separate plans are associated if an employer who participates in one plan also participates, or does not deal at arm's length with an employer who participates, in the other plan.

Where a defined benefit provision ("Provision A") is associated with another defined benefit provision ("Provision B") under the normal rules in subsection 8503(24) but it is unreasonable to expect the benefits under Provision B to be coordinated with the benefits under Provision A, new subsection 8503(25) provides that the Minister of National Revenue may agree that Provisions A and B are not associated.

Subsection 8503(24) and (25) apply to benefits that are provided or payable after 2007.

Clause 69

Highest average compensation

ITR
8504(2)

Subsection 8504(2) of the Regulations specifies how to compute the highest average indexed compensation of a member of an RPP for the purpose of determining, under subsection 8504(1), the maximum lifetime retirement benefits that may be paid to the member under a defined benefit provision of the plan. In general terms, the highest average indexed compensation is equal to the average of the best three years of compensation indexed to reflect increases in the average wage from the year in which the compensation was paid to the year in which the member's retirement benefits commenced to be paid.

Subsection 8504(2) is amended as a consequence of the introduction of subsection 8503(17), which enables an RPP to provide for the payment of bridging benefits on a stand-alone basis (i.e., without the simultaneous payment of lifetime retirement benefits) to qualifying employees. Bridging benefits are considered to be retirement benefits. The amendment to subsection 8504(2) replaces the expression "retirement benefits" with the expression "lifetime retirement benefits". This ensures that, in computing the highest average indexed compensation of a member who has received stand-alone bridging benefits, the member's compensation can be indexed to the year in which the member's lifetime retirement benefits commence to be paid, rather than the possibly earlier year in which the bridging benefits commenced to be paid.

This amendment applies to the 2008 and subsequent calendar years.

Clause 70

Qualifying periods and periods of parenting

ITR
8507(3)(*a*)

Subsections 147.1(8) and (9) of the Act require that pension adjustments (PAs) not exceed specified limits, including limits that depend on compensation. Compensation is defined in subsection 147.1(1) and includes compensation that is prescribed by section 8507 of the Regulations. This allows a notional amount of remuneration to be included in respect of periods when an individual's remuneration is reduced because the individual is disabled, on leave of absence or rendering services on less than a regular basis. The inclusion of such amounts in compensation enables benefits to accrue under a defined benefit provision, or contributions to be made under a money purchase provision, as if the individual had not had a reduction in remuneration, without violating the PA limits in subsections 147.1(8) and (9).

Subsection 8507(1) prescribes an amount of compensation in respect of an eligible period of reduced pay or temporary absence only if the period is a qualifying period. Paragraph 8507(3)(*a*) defines the expression "qualifying period".

Paragraph 8507(3)(*a*) is amended to exclude, through new subparagraph (vii), any period after the time that the individual commenced to receive bridging benefits, or to accrue additional benefits, under circumstances to which new subsection 8503(17) or (19) applied. These provisions enable a defined benefit RPP to provide for qualifying employees to receive bridging benefits on a stand-alone basis or to receive up to 60 per cent of their accrued pension while continuing to accrue additional benefits. The amendment to paragraph 8507(3)(*a*) ensures that compensation cannot be prescribed for individuals who have benefited from these new provisions.

This amendment applies to the 2008 and subsequent calendar years.

Clause 71

Replacement of "prescribed stock exchange" by "designated stock exchange"

ITR
8514

This amendment is consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 59 for more information.

Clause 72

Eligible contributions

ITR
8516

Section 8516 provides that certain contributions made by an employer to an RPP are prescribed contributions for the purposes of subsection 147.2(2) of the Act. Subsections 8516(2) to (4) make reference to designated plans as defined in section 8515.

Subsections 8516(2) to (4) are amended to eliminate the reference in those subsections to section 8515. These amendments are strictly consequential to the introduction of the definition "designated plan" in subsection 8500(1), which applies for the purposes of all of Part LXXXV of the Regulations. These amendments apply after 2007.

Clauses 73

Replacement of "prescribed stock exchange" by "designated stock exchange"

This amendment is consequential to the replacement of the "prescribed stock exchange" concept by the new category of "designated stock exchange". Please refer to the commentary on Clause 59 for more information.

Clause 74

Prescribed programs of physical activity

ITR
9400

New Part XCIV of the Regulations defines, for the purpose of the definition "eligible fitness expense" in section 118.03 of the Act (the Child Fitness Tax Credit), the activities that qualify as a prescribed program of physical activity.

Definitions

ITR
9400(1)

New subsection 9400(1) of the Regulations defines terms for the purpose of subsection 9400(2) which prescribes certain types of programs of physical activity that qualify under section 118.03 of the Act for the Child Fitness Tax Credit.

"physical activity"

"Physical activity" means a supervised activity suitable for children that contributes to cardio-respiratory endurance and to one or more of the following: muscular strength, muscular endurance, flexibility and balance; for example, hockey, karate, football, swimming and hiking. The physical activity cannot consist of an activity where a child rides on or in a motorized vehicle as an essential component of the activity. This would, for example, exclude from the definition riding a snowmobile but would include waterskiing.

"qualifying child"

"Qualifying child" has the meaning assigned by subsection 118.03(1) of the Act. Please refer to the commentary on that subsection for more information.

Prescribed program of physical activity

ITR
9400(2)

New subsection 9400(2) of the Regulations prescribes programs of physical activity for the purposes of the definition "eligible fitness expense" in subsection 118.03(1) of the Act.

A prescribed program of physical activity is

- a weekly program of a duration of 8 or more consecutive weeks in which all or substantially all of the activities include a significant amount of physical activity (please refer to the commentary on the definition "physical activity" for more information),
- a program of a duration of 5 or more consecutive days of which more than 50 per cent of the daily activities include a significant amount of physical activity (please refer to the commentary on the definition "physical activity" for more information) – for example, this would apply to summer and day camp programs,
- a program offered to children by a club association or similar organization (the "organization") in circumstances where a participant in the program may select amongst a variety of activities if
  - more than 50 per cent of those activities offered to children by the organization are activities that include a significant amount of physical activity (please refer to the commentary on the definition "physical activity" for more information), or
  - more than 50 per cent of the time scheduled for activities offered to children in the program is scheduled for activities that include a significant amount of physical activity (please refer to the commentary on the definition "physical activity" for more information); or
- a membership in an organization of a duration of 8 or more consecutive weeks if more than 50 per cent of all the activities offered to children by the organization include a significant amount of physical activity (please refer to the commentary on the definition "physical activity" for more information).

Note that, to qualify as a prescribed program of physical activity, these programs cannot be part of a school's curriculum.

Example:

Sabrina just joined the Girl Guides of Canada. Her mother paid $100 in registration fees for 2 hours of activities per week for 10 weeks. The Girl Guides program provides that 1 hour and 15 minutes of the 2 hours of activities will be devoted to physical activity. Therefore, the program will be considered a prescribed program of physical activity and Sabrina's mother may claim a child fitness tax credit of $15.50 ($100 x 15.5%).

Mixed-use facility

ITR
9400(3)

New subsection 9400(3) of the Regulations applies in cases where a program is not a prescribed program of physical activity because it does not meet the 50 per cent requirement set out in paragraph 9400(2)(*c*). In such cases, subsection 9400(3) allows a taxpayer to claim a portion of the amount that is paid for the program as an eligible fitness expense. In such circumstances, a "portion of the program" is considered a prescribed program of physical activity and that portion is either

- the percentage of activities offered to children by the organization that are activities that include a significant amount of physical activity, or
- the percentage of the time scheduled for activities in the program that is scheduled for activities that include a significant amount of physical activity.

Example:

Sabrina's mother pays $200 for the registration of her daughter at a community center. The portion of the activity offered to children by the center that qualifies as physical activities for the purpose of the credit is 40 per cent. Therefore, only 40 per cent of the program will be considered a prescribed program of physical activity and Sabrina's mother may claim a child fitness tax credit of $12.40 (($200 x 40 per cent) x 15.5%).

Membership

ITR
9400(4)

New subsection 9400(4) of the Regulations provides for cases where a membership in an organization does not meet the 50 per cent activities requirement set out in paragraph 9400(2)(*d*). Assuming the activity is not part of a school's curriculum, the portion of the expense that will be eligible for the purpose of the definition "eligible fitness expense" in subsection 118.03(1) of the Act is the portion of the activities offered to children by the organization that are activities that include a significant amount of physical activity.

Horseback riding

ITR
9400(5)

For the purpose of the definition "physical activity", new subsection 9400(5) of the Regulations deems horseback riding to be an activity that contributes to cardio-respiratory endurance and to one or more of the following: muscular strength, muscular endurance, flexibility and balance.

New Part XCIV of the Regulations applies to the 2007 and subsequent taxation years.

Canada Pension Plan Regulations

Clause 75

Remittance - quarterly basis

CPPR
8(1.12)

Subsection 21(1) of the *Canada Pension Plan Act* authorizes the deduction of employee contributions for any period in which remuneration is paid.

Similarly, subsection 153(1) of the *Income Tax Act* authorizes the withholding of tax from payments described in that subsection and subsection 82(1) of the *Employment Insurance Act* authorizes the deduction of employee premiums, for any period in which remuneration is paid.

An employer is required to remit the amounts withheld or deducted to the Receiver General on behalf of its employees. The amount of tax withholdings, as well as employee and employer contributions and premiums payable, must be remitted on or before specific dates. Currently an employer with an average monthly withholding amount of less than $1,000 for the first or the second preceding calendar year, and who has no compliance irregularities for the preceding 12 months, can remit on a quarterly basis, instead of on a monthly basis. For this purpose, the average monthly withholding amount is described in subsection 108(1.2) of the *Income Tax Regulations*.

Subsection 8(1.12) of the *Canada Pension Plan Regulations* is amended to ensure that an employer with average monthly withholding amount of less than $3,000 (instead of $1,000) for the first or the second preceding calendar year, and no compliance irregularities for the preceding 12 months, can remit on a quarterly basis, instead of on a monthly basis.

Subsection 8(1.12) of the *Canada Pension Plan Regulations* is amended in two respects. First, a reference in paragraph 8(1.12)(*a*) to the average monthly withholding amount of $1,000 is changed to "$3,000." Second, paragraph 8(1.12)(*b*) is rewritten to simply the provision and by combining the requirements in subparagraphs 8(1.12)(*b*)(i) and (ii) into paragraph (*b*). These amendments to subsection 8(1.12) apply in respect of amounts required to be deducted or withheld after 2007.

Insurable Earnings and Collection of Premiums Regulations

Clause 76

Withholding amount

IECPR
4(3.1)

Subsection 82(1) of the *Employment Insurance Act* authorizes the deduction of employee premiums for any period in which remuneration is paid.

Similarly, subsection 153(1) of the *Income Tax Act* authorizes the withholding of tax from payments described in that subsection and subsection 21(1) of the *Canada Pension Plan Act* authorizes the deduction of employee contributions, for any period in which remuneration is paid.

An employer is required to remit the amounts withheld or deducted to the Receiver General on behalf of its employees. The amount of tax withholdings, as well as employee and employer contributions and premiums payable, must be remitted on or before specific dates. Currently an employer with an average monthly withholding amount of less than $1,000 for the first or the second preceding calendar year, and who has no compliance irregularities for the preceding 12 months, can remit on a quarterly basis, instead of on a monthly basis. For this purpose, the average monthly withholding amount is described in subsection 108(1.2) of the *Income Tax Regulations*.

Subsection 4(1.12) of the *Insurable Earnings and Collection of Premiums Regulations* is amended to ensure that an employer with an average monthly withholding amount of less than $3,000 (instead of $1,000) for the first or the second preceding calendar year, and who has no compliance irregularities for the preceding 12 months, can remit on a quarterly basis, instead of on a monthly basis.

Subsection 4(1.12) of the *Earnings and Collection of Premiums Regulations* is amended in two respects. First, a reference in paragraph 4(1.12)(*a*) to the average monthly withholding amount of $1,000 is changed to "$3,000." Second, paragraph 4(1.12)(*b*) is rewritten to simply the provision and by combining the requirements in subparagraphs 4(1.12)(*b*)(i) and (ii) into paragraph (*b*).

The amendments to subsection 4(1.12) apply in respect of amounts required to be deducted or withheld after 2007.

Part 2

Amendments in Respect of the Goods and Services Tax/Harmonized Sales Tax

Excise Tax Act

Clause 77

Imported taxable supply

ETA
217(*c.1*)

Division IV of Part IX of the *Excise Tax Act* (the Act) imposes tax in respect of certain supplies made outside Canada and in respect of other supplies on which the recipient, as opposed to the supplier, is required to account for tax. Section 217 of the Act defines those supplies as "imported taxable supplies" for purposes of Division IV.

New paragraph 217(*c.1*) includes in the definition "imported taxable supply" a taxable supply made in Canada of intangible personal property ("IPP") that is a zero-rated supply only because it is included in section 10 or 10.1 of Part V of Schedule VI to the Act unless the supply is described by either new subparagraphs 217(*c.1*)(i) or (ii). Sections 10 and 10.1 zero-rate certain supplies of IPP made to unregistered non-resident persons.

New subparagraph 217(*c.1*)(i) excludes a supply of IPP made to an individual who is a consumer of that IPP from being an imported taxable supply under new paragraph 217(*c.1*). The definition "consumer" of property or a service in subsection 123(1) of the Act applies for the purposes of new subparagraph 217(*c.1*)(i). For example, the purchase by an unregistered non-resident individual of IPP that is a digital music file under a supply made in Canada that is zero-rated by section 10.1 of Part V of Schedule VI would not be an imported taxable supply described by new paragraph 217(*c.1*) if the music file were acquired for the individual's personal use because the purchaser would be a consumer of the IPP.

New subparagraph 217(*c.1*)(ii) excludes a supply of IPP from being an imported taxable supply under new paragraph 217(*c.1*) if the IPP is acquired for consumption, use or supply exclusively in the course of commercial activities of the recipient of the supply. For example, the purchase by an unregistered non-resident person of IPP that is a patent acquired for use exclusively in manufacturing a product the supply of which is a commercial activity of the person would not be an imported taxable supply described by new paragraph 217(*c.1*).

New subparagraph 217(*c.1*)(ii) also excludes a supply of IPP from being an imported taxable supply under new paragraph 217(*c.1*) when the property is acquired for consumption, use or supply exclusively in the course of activities that are engaged in exclusively outside Canada by the recipient of the supply and that are not part of a business or adventure or concern in the nature of trade engaged in by the recipient in Canada. For example, a supply of IPP that is a software licence for specific management functions acquired for use exclusively in the course of the activity of operating an apartment building situated outside of Canada that is not part of a business or adventure or concern in the nature of trade engaged in by the recipient in Canada would be excluded by new subparagraph 217(*c.1*)(ii) from being an imported taxable supply under new paragraph 217(*c.1*).

A supply of a software licence that is zero-rated only under section 10.1 of Part V of Schedule VI would, however, be an imported taxable supply described by new paragraph 217(*c.1*) if, for example, the software were acquired by a financial institution for use in carrying on an activity that is the making of exempt supplies of financial services and that is engaged in partly in Canada. In this case, new subparagraph 217(*c.1*)(ii) would not apply to exclude the supply from being an imported taxable supply. The IPP supplied would not be for use exclusively in the course of commercial activities of the recipient financial institution, because the making of exempt supplies is not a commercial activity, nor would the IPP be for use exclusively in the course of activities that are engaged in exclusively outside Canada by the recipient, because the activity of making exempt supplies of financial services is engaged in partly in Canada.

New paragraph 217(*c.1*) applies to supplies made after March 19, 2007.

Clause 78

Tax in participating province

ETA
218.1

Section 218.1 of the Act imposes tax in respect of the provincial component of the Harmonized Sales Tax (HST) on certain supplies of property or services that are "imported taxable supplies" as defined in section 217 of the Act.

Existing paragraph 218.1(1)(*d*) is amended to add a reference to supplies that are included in new paragraph 217(*c.1*) of the Act, which describes an "imported taxable supply" (within the meaning of section 217) of intangible personal property (IPP). As a result of this amendment to section 218.1, a supply of IPP that is included in new paragraph 217(*c.1*) may also be subject to the provincial component of the HST if the supply is made in a particular participating province.

The amendment applies to supplies made after March 19, 2007.

Clause 79

Meal expenses of truck drivers

ETA
236(1)

Subsection 236(1) of the Act is intended to parallel section 67.1 of the *Income Tax Act*. Section 67.1 limits the amount allowed as a deduction in respect of food, beverages and entertainment for income tax purposes to reflect the personal consumption aspect inherent in these types of expenses. The net recovery by a person of GST/HST as input tax credits (ITCs) is limited accordingly by subsection 236(1) in respect of these amounts. The intended treatment for GST/HST purposes is to recapture ITCs claimed by the person and attributable to these expenses in the same proportion as the expenses are disallowed as a deduction for income tax purposes.

Subsection 236(1) is amended, consequential to amendments to section 67.1 of the *Income Tax Act*, to apply a new rate of recapture to ITCs claimed by a person in respect of food and beverages consumed by a long-haul truck driver during the driver's eligible travel period (as those terms are defined in section 67.1 of the *Income Tax Act*). The proportion of ITCs claimed by the driver that are recaptured will decrease as the deductible portion of long-haul truck driver meal expenses increase for income tax purposes.

In respect of food and beverage expenses in all other circumstances that are deductible for income tax purposes under section 67.1 of the *Income Tax Act*, the net rate of recovery of ITCs by a person will remain at 50 per cent. Also, there is no change to the 50 per cent rate of recapture of ITCs claimed by a person in respect of entertainment expenses deductible under section 67.1 of the *Income Tax Act*.

The amendments apply to amounts in respect of a supply of food, beverages or entertainment if tax under Part IX of the Act in respect of the supply becomes payable, or is paid without having become payable, after March 19, 2007 where no allowance or reimbursement is paid in respect of the supply. The amendments also apply to allowances or reimbursements paid after March 19, 2007 in respect of the supply. The rate of recapture of ITCs claimed by a driver in respect of food and beverages consumed during an eligible travel period will be:

(i) 40 per cent, for tax in respect of the supply that becomes payable, or is paid without having become payable, after March 19, 2007 and before 2008 where no allowance or reimbursement is paid in respect of the supply, or for allowances or reimbursements paid after March 19, 2007 and before 2008 in respect of the supply;

(ii) 35 per cent, for tax in respect of the supply that becomes payable, or is paid without having become payable, in 2008 where no allowance or reimbursement is paid in respect of the supply, or for allowances or reimbursements paid in 2008 in respect of the supply;

(iii) 30 per cent, for tax in respect of the supply that becomes payable, or is paid without having become payable, in 2009 where no allowance or reimbursement is paid in respect of the supply, or for allowances or reimbursements paid in 2009 in respect of the supply;

(iv) 25 per cent, for tax in respect of the supply that becomes payable, or is paid without having become payable, in 2010 where no allowance or reimbursement is paid in respect of the supply, or for allowances or reimbursements paid in 2010 in respect of the supply; and

(v) 20 per cent, for tax in respect of the supply that becomes payable, or is paid without having become payable, after 2010 where no allowance or reimbursement is paid in respect of the supply, or for allowances or reimbursements paid after 2010 in respect of the supply.

Clause 80

Minimum instalment base

ETA
237(3)

Subsection 237(3) of the Act provides that where a registrant's instalment base (within the meaning of subsection 237(2) of the Act) is less than $1,500 for a reporting period, it is deemed to be nil. Therefore, where net tax for a fiscal year is less than $1,500, the registrant is not required to make instalment payments for that year or the subsequent year.

Subsection 237(3) is amended to increase, from $1,500 to $3,000, the minimum instalment base below which a registrant is not required to make instalment payments. This will reduce the paper burden of small businesses and improve their cash flow position.

The amendment applies to reporting periods beginning after 2007.

Clause 81

Election for fiscal years

ETA
248

Section 248 of the Act sets out rules relating to an election for annual filing of GST returns.

Subclause 81(1)

Election for fiscal years

ETA
248(1)

Subsection 248(1) of the Act provides that where a registrant's threshold amount (within the meaning of subsection 249(1) of the Act) for a fiscal year (i.e., generally, the total of all consideration becoming due, or paid without having become due, for total taxable supplies made by a registrant in the preceding fiscal year) does not exceed $500,000, the registrant may elect for annual reporting periods.

Subsection 248(1) is amended to increase, from $500,000 to $1,500,000, the maximum threshold amount below which a registrant may make an election for reporting periods that are fiscal years. This will reduce the paper burden of small businesses and improve their cash flow position.

The amendment applies to fiscal years beginning after 2007.

Subclause 81(2)

Duration of election

ETA
248(2)

Subsection 248(2) of the Act specifies that an election for reporting periods that are fiscal years generally remains in effect until the earliest of the day on which an election for monthly or quarterly filing takes effect, the first day of the second or third fiscal quarter of the registrant for which the threshold amount for the quarter (within the meaning of subsection 249(2) of the Act) of $500,000 is exceeded, and the first day of the fiscal year of a registrant where the threshold amount for that year (within the meaning of subsection 249(1)) exceeds $500,000.

Subsection 248(2) is amended to increase, consequential to the amendment to subsection 248(1), from $500,000 to $1,500,000, the threshold amount applicable in determining the duration of an election for reporting periods that are fiscal years.

The amendments apply to fiscal years beginning after 2007.

Clause 82

Non-taxable importations

ETA
VII/1.2

Schedule VII to the Act enumerates goods that are not subject to the GST/HST on importation under Division III of Part IX of the Act. In particular, section 1 of Schedule VII to the Act includes certain goods that are classified under heading 98.04 of Schedule I to the *Customs Tariff*. This includes goods up to a specified dollar limit that returning residents bring back from a stay outside Canada and that are not subject to the GST/HST on importation.

The amendment adds new section 1.2 to Schedule VII to provide that subsection 140(2) of the *Customs Tariff* does not apply in respect of the reference to heading 98.04 in section 1 of Schedule VII. Subsection 140(2) of the *Customs Tariff* was introduced to ensure that the tax status of imported goods was not changed as a result of the implementation of a new simplified *Customs Tariff* in 1998.

In respect of the GST/HST, subsection 140(2) of the *Customs Tariff* provides that a reference in a provision of an Act of Parliament other than the *Customs Tariff*, or of an order or regulation made under an Act of Parliament, to a heading, subheading, tariff item or code, or portion of a heading, subheading, tariff item or code, of the former *Customs Tariff* or to a note to a chapter of Schedule I to the former *Customs Tariff* shall, for any purpose relating to a tax under the *Excise Tax Act*, be read as a reference to that heading, subheading, tariff item, code, portion or note as it read immediately before January 1, 1998.

The amendment allows section 1 of Schedule VII to refer to goods that are classified under heading 98.04 as amended from time to time in the schedule of the *Customs Tariff*. One such amendment was included in the *Budget Implementation Act, 2007*; effective March 20, 2007, the dollar limit by which returning residents of Canada may import goods on a customs duty-free basis, after being abroad for 48 hours, was increased from $200 to $400. The amendment allows that increase in the travellers' exemption to also apply for GST/HST purposes effective March 20, 2007. Increasing the 48-hour exemption will make it more convenient for travellers to clear customs and will reduce the amount of processing at the border.

New section 1.2 is deemed to have come into force on January 1, 1998, the same day as the simplified *Customs Tariff* came into effect.

Part 3

Amendment to the Excise Tax Act (Other than with Respect to the Goods and Services Tax/Harmonized Sales Tax)

Excise Tax Act

Clause 83

Excise taxation of renewable fuels

ETA
23.4 and 23.5

Alcohol blended fuels

Existing section 23.4 of the *Excise Tax Act* (the Act) provides relief from the excise tax on gasoline and diesel fuel for the alcohol portion of blended gasoline-alcohol and diesel-alcohol fuels. The exemption applies only where the alcohol (i.e., ethanol or methanol) is produced from biomass or renewable feedstock.

The amendment repeals section 23.4, effective April 1, 2008. As a result of the repeal, the alcohol portion of blended gasoline-alcohol and diesel-alcohol fuels will be subject to the excise tax on gasoline and diesel fuel, respectively, in accordance with the definitions of "gasoline" and "diesel fuel" in subsection 2(1) of the Act.

Bio-diesel fuel

Existing section 23.5 of the Act provides relief from the excise tax on diesel fuel for bio-diesel fuel, and for the bio-diesel fuel portion of blended diesel-bio-diesel fuels. The exemption applies only where the bio-diesel fuel is produced from waste materials or feedstock of a biological origin.

The amendment repeals section 23.5, effective April 1, 2008. As a result of the repeal, bio-diesel fuel, and the bio-diesel fuel portion of blended diesel-bio-diesel fuels, will be subject to the excise tax on diesel fuel, in accordance with the definition of "diesel fuel" in subsection 2(1) of the Act.